Proceedings of the Council

OF THE

LIEUT.-GOVERNOR OF BENGAL

MAKING LAWS AND REGULATIONS.

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ERRATA.

In page 41, after line 9, insert—

"The motion was then agreed to and the Bill referred to a Select Committee consisting of the Hon'ble Messrs. Mackenzie, Field, O'Kinealy, and Knight, the Hon'ble Syed Ameer Hossein, the Hon'ble Peary Mohun Mookerjee, the Hon'ble Maharajah of Durbhunga, and the Mover, with instructions to report in a fortnight."

In page 125, line 1 of last paragraph, before "MR. FIELD," insert "The HON'BLE"

PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 10th January 1880.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble C. T. Buckland,
The Hon'ble H. L. Dampier,
The Hon'ble A. Mackenzie,
The Hon'ble J. O'Kinealy,
The Hon'ble C. D. Field, LL.D.,
The Hon'ble Syud Moulvi Ameer Hossein,
The Hon'ble Mohini Mohun Roy,
The Hon'ble A. B. Inglis,
The Hon'ble Kristodas Pal, Rai Bahadoor, C.I.E.,
The Hon'ble J. B. Knight, C.I.E.,
and
The Hon'ble Peary Mohun Mookerjee.

ROAD AND PROVINCIAL PUBLIC WORKS CESSES.

The Hon'ble Mr. Dampier moved that the Bill to amend and consolidate the law relating to local rating for the construction charges and maintenance of roads and other means of communication and of provincial public works be read in Council. The Bill, he said, had been several days in the hands of hon'ble members, and the alterations which had been made in the existing law were printed in italics. As he said in asking leave to introduce the Bill, the Public Works Cess Act and the Road Cess Act were repealed, and were consolidated into this one new Bill.

The first change which he need notice was in the definition of the term "cultivating ryot;" and he must here explain that although the Bill was materially in the shape in which it had been put by the Board of Revenue, he was not personally answerable for all its provisions. In Act X of 1871, then,

the definition of cultivating ryot was "a person cultivating land and paying rent therefor not exceeding Rs. 100 per annum." The cultivating ryot was the subject of a different mode of valuation from the tenure-holder. In the present Bill the definition had been changed to "a person cultivating himself or through hired labourers or others lands held in his name for which he receives no rent in money or in kind," without reference to the amount of his jumma. Objection had been made to Mr. Dampier already that such a definition would throw a good deal of trouble upon zemindars in submitting their returns. This was a matter for consideration in Select Committee.

In the definition of "immovable property" it would be seen that houses, shops, and other buildings, were excluded. The Bill omitted the provision of the existing Act which imposed a cess upon houses. Hon'ble members were probably aware that the levy of the cess upon houses was attended with intolerable irritation and vexation. As had been frequently said, three-fourths of the discontent against the Act was caused by the levy of an eighth of its proceeds in the shape of house cess.

The next material alteration was in section 9. As the Act stood now it had indeed been interpreted to mean that when the first five years of the valuation had expired, the Government might, instead of ordering the general revaluation of a district, direct that selected estates only be revalued; and this interpretation had been acted upon, but the Act at any rate did not say this in so many words. As section 9 stood in the Bill, there could be no doubt whatever that it gave power to the Government to order such a revaluation of selected estates only.

In section 10 of the Bill there was a little word, "two," in italics which meant a good deal. For this he was not responsible. Three months was allowed to zemindars to make returns under the existing law: here it was proposed to reduce the time to two months, a change which the Select Committee would have to consider.

Then he came to section 12, which, as he mentioned in his first speech, referred to the power of summarily valuing tenures of which the revenue or rent was under Rs. 100. The existing Act gave such a power of summary valuation as regards rent-paying estates, but none as regards lakhiraj estates. There was a large number of these which were very petty, and it was desirable to have the means of valuing them summarily also. Section 12 therefore provided that a lakhiraj estate which was borne on the register as such, and the rent received from which was less than Rs. 100, should be liable to summary valuation.

Section 22 was a section which was commonly introduced for the purpose of such enquiries as would be made under this Bill: it provided that the Collector might summon witnesses and enforce their attendance, and make them give evidence under the powers contained for the purpose in the Civil Procedure Code.

The proposed addition to section 26 provided for the division of the cess and the separate liability of the parties, if the parent estate was divided by butwarra into two or more estates during the currency of a valuation.

The Hon'ble Mr. Dampier.

Section 27 was new. In the existing Act there was not one word about amending or modifying the valuation until the period of five years had expired, and it might be argued that no authority had legal power to change a valuation and the amount of tax calculated on it during such period. But a strict adherence to the valuations would in some cases have caused much hardship, as for instance in cases of diluvion. The Board of Revenue had therefore, *per fas et nefas*, given relief in such cases. This section provided that although no valuation would be increased during the five years' currency, yet, for good reasons shown, the Board might reduce a valuation within that term.

Then he might mention another point which had not been introduced into the Bill, but which had since occurred to him. After the five years' currency was over, it now rested with the Government to order a revaluation: no one would have a right to claim a new valuation unless the Government chose to order it. He thought it would be right to introduce a clause to the effect that whenever the currency of a valuation was over, a proprietor might, as of right, claim a revaluation. He proposed to lay such a clause before the Select Committee for its consideration.

Section 32 was merely to provide for a separation of liability for cess where a separate account was opened under Act XI of 1859: this was not provided for in the existing Act.

Section 34 provided for a matter of very great executive convenience. As the law stood (section 36), it was necessary to serve a notice on each payer whenever the rate of road cess for any year had been determined by the District Committee, but frequently, if not generally, it so happened that the rate of the preceding year was continued, and then there was no change in the amount of tax payable by each person. In such cases the amount of tax payable by each was well known and no individual notice was required, and so the Bill provided: that would be of course a great saving of labour and expense.

The new portion of section 37 attempted to give some relief to zemindars as regards the difficulty of their recovering the cess from the holders of rent-free lands in their estates. It provided that if the cess for such land was not paid to the holder of the estate or tenure by due date, he should be entitled to recover from the holder of such land an additional sum equal to double the amount of the cess with all costs of suit; and in that way many items which in themselves were too trifling to be worth the trouble of recovering by compulsory process, might reach an amount which would be worth recovering.

Sections 39 to 51 contained the principal change in the Act. In referring to them it was unnecessary for MR. DAMPIER to go into details, but the object was to force into light the holders of rent-free lands which had hitherto escaped taxation. The obligation was now imposed on the zemindar to include such lands in his returns, but the zemindars had not fulfilled that obligation, because it practically entailed upon them the payment of the tax for the rent-free holders which they were not subsequently able to recover. The principle of these sections was to have a register of claims to hold lands rent-free. The holders of rent-free tenures were required to come forward and register their claims to hold

land. Registration would be of the fact of the claim being made; it would be no evidence against anybody. Whoever said he held certain land without payment of rent would be registered, and thereupon would become liable to pay the cess, which would be collected by the zemindar or directly by the agency of a tehsildar: and there was a penalty imposed for not coming forward to register. It was hoped that this penalty, and also the natural unwillingness of every holder of such lands to leave his claim unregistered, would bring him forward to accept his liability to taxation under this Act, which it was now in many cases impossible to enforce.

Section 52 was new. Under the present law District Committees had entire control over the cost of establishment; but they had nothing to do with the collection of the cess. As hon'ble members were aware, the revenue officers of Government had to make the collections and hand them over to the District Committees. But if the Collector wanted an additional peadah for collecting, he was obliged to ask the permission of the District Committee. The Committee had no knowledge of the working of the collections, and it was therefore provided that the establishment for making valuations and collections, and for all other purposes connected therewith, should be appointed by the Collector, and should be paid by the District Committee upon bills presented by the Collector.

Section 81 provided that gratuities and pensions might be given out of the District Road Fund. This was new, and in addition to what was provided in that section before.

In section 87 the objects for which the District Road Fund should be expended were set out categorically.

Then he came to section 107. As the existing Act stood, the District Fund had to contribute to the establishment entertained in the "office of the Collector:" in the present Bill it stood "in the offices of the Collector, the Accountant-General, and the Board of Revenue," with regard to which alteration MR. DAMPIER was prepared for the discussion which this Council had many a good time held on that particular subject.

Hon'ble members were aware that under the existing law the two cesses—the Road Cess and the Provincial Public Works Cess—were collected and the valuations made by the same establishment. The former cess was collected for the District Committees, the latter for the provincial revenues. There was no provision in the existing Acts as to how the cost of such processes should be distributed between the Government and the District Committees. Section 108 of the Bill supplied this omission, and provided that in consideration of the Public Works Cess being collected by the same establishments, which were in the first instance paid for by the District Committees, the Lieutenant-Governor might make an assignment of such proportion of the cost of establishment as he thought right to such District Committees.

Section 109, hon'ble members were aware, re-introduced the mode of collecting these cesses, which had on a former occasion been the subject of much discussion,—namely, that these cesses should be collected by the easy and

The Hon'ble Mr. Dampier.

simple, and, to all concerned, the cheap process by which the land revenue was now collected. The system was to fix a well known date by which the cesses should be paid, and to impose a penalty for default—the sale of the estate—which was so severe that practically the tax-payer took care not to incur it, and he took care to come in and pay the dues on or before the given date. The question was, should the cesses be collected according to that system, or should the person only, and not the estate, be followed; should they be collected as had been done hitherto very much in the way that other Government demands were collected? It would be seen that in the Bill which subsequently became Act X of 1871 as originally introduced into Council it was proposed to collect the cess as an arrear of revenue. The majority of the Council, he believed, were in favour of the proposal; but as a concession, the Lieutenant-Governor for the time being agreed that it should be given up in deference to the wishes of the minority. In the discussions some very able names were on the other side, and the argument they took was that not to make the cess recoverable as arrears of revenue was nothing but cruel kindness. If this power of realizing promptly and without cost by the fear of the estate being brought to sale was not given, it became necessary to entertain and let loose a host of peadahs with notices and processes, and all sorts of vexation attended the recovery. It would be for the Council to decide which of the two processes should be adopted: the Bill raised that question again. At present, for the levy of innumerable very trifling amounts of cess, armies of peadahs had to be kept up, and the costs often came up to the amount of arrears recovered, and more. As the Act now stood, the movable property only of the defaulter could be followed. If the arrears were not to be levied as arrears of revenue, the power of recovering by sale of landed property (as well as of personal property) must at least be given, as was already the case for the levy of other public dues.

Lastly, MR. DAMPIER would refer to section 112 of the Bill. There was a little haziness in the present Act as to the charge to be made for processes under the Act. It provided that the cost of certain processes should be paid for by those on whom they were served, and contemplated that the defaulter should only pay the exact cost of the process served upon him, but a large number of processes might be served by one man; and it then became impossible to say what share of the cost should be borne by each of the persons upon whom a process was served. In practice, an average had been struck of the number of these processes and of the cost of establishment necessary for issuing them. Then the cost, whatever it might be, was spread over the total number of paying processes estimated to be issued in each district in the year, and an average amount was fixed as leviable on each process, instead of going through a calculation to find the cost of each individual process separately.

These were all the alterations of any consequence which the Bill in its present shape made in the existing law.

The HON'BLE PEARY MOHUN MOOKERJEE said there were two or three points in this Bill which called for remark. When the present Act X of

1871 was passed, the Collector had no means of ascertaining the names of all the proprietors in an estate or the extent of interest held by each proprietor. It was consequently necessary to look upon each estate as a unit of assessment, and to make all proprietors who were joint owners thereof jointly and severally liable to the cess. The working of the law for eight years had shown that that provision had been a source of great hardship to a large body of land-holders. In all cases of joint ownership the entire amount of the cess was recovered by the Collector from the shareholder from whom the cess could be most easily recovered, leaving him to seek redress by means of vexatious suits against his co-sharers. But now that Act VII (B.C.) of 1876 had placed in the hands of the Collector ample information as to the names and the extent of interest of all holders of estates in the district, the tax-payers had a right to expect, and BABOO PEARY MOHUN MOOKERJEE thought with reason, that in an amended Cess Act some provision should be made for the collection of the cess from the different shareholders owning joint property in proportion to their shares.

The next point in regard to which he wished to make some remark was with reference to section 27. As had been justly remarked by the hon'ble member in charge of the Bill, the Bill gave the public authorities ample power to make a revaluation of an estate at the end of five years. BABOO PEARY MOHUN MOOKERJEE thought that a landholder should have the right to put in new returns and to apply for a revaluation in all cases in which the annual value of his estate had diminished since the date of the last valuation. He knew of several cases in which landholders whose assets had been reduced by the death of ryots, by relinquishment, or by diluvion since the date of the last valuation, had been obliged to pay much more than they were properly liable to pay.

But the most objectionable provision in the Bill was section 109, which sought to alter the existing law as to the recovery of arrears of cess. By Act X of 1871 arrears of cess were recoverable either by sale of the goods and chattels of the defaulter, or by khas collection of the cess from the revenues of the estate by the Collector's agents. But section 109 provided that not only arrears of cess, but all fines, fees, and costs leviable under the Act, might be recovered as arrears of revenue by the sale of the estate. Hon'ble members were well aware that the cess was not payable by the holder of the estate alone, but partly by the holder of the estate and partly by the subordinate tenure-holders and ryots; why, therefore, should the estate of one person be sold for the recovery of that which was principally payable by others. Besides, if the estate were made liable to sale for the recovery of an arrear of cess however small in amount, the value of the whole property would materially depreciate, and ruin would be brought not only upon the defaulter, but also on his subordinate tenure-holders who might have paid their cess. As had been remarked by the hon'ble mover, a similar provision was contained in the original Bill which subsequently developed into Act X of 1871, and Sir George Campbell did not hesitate to call it a blot on that Bill. And if it was considered a blot at a time when the registry of

proprietary titles in the Collector's office was in any but a satisfactory condition, how much more so was it now when there were complete registers of such titles. BABOO PEARY MOHUN MOOKERJEE hoped His Honor's Council would not give sanction of law to this most objectionable innovation.

The HON'BLE KRISTODAS PAL said, in asking for leave for the introduction of this Bill the hon'ble member in charge paid a well-merited tribute of praise to the memory of the late Mr. Schalch, who brought his great ability, sagacity, and knowledge to bear on the original design and subsequent elaboration of the Road Cess Act. BABOO KRISTODAS PAL thought hon'ble members of Council, who took part in the enactment of the Road Cess Act, would allow that the Council was equally indebted to another member—alas, now no more!—who lent his thinking mind and great practical knowledge to the solution of the problem then before them; he alluded to his lamented friend Rajah Digumber Mitter. Although that gentleman was on principle opposed to the imposition of the road cess, still, when it was decided that the cess should be imposed, he loyally and cheerfully co-operated in giving a practical shape to the Bill; and BABOO KRISTODAS PAL believed that the great self-acting principle of assessment, to which the success of the measure was chiefly due, was first suggested by Rajah Digumber Mitter and subsequently matured by the Committee.

The object of the present Bill was to remedy some defects of the existing Act, which its working for the last eight years had brought to light. By far the most important improvement which the hon'ble member in charge of the Bill had suggested was the registration of lakhiraj tenures for the assessment of those tenures. BABOO KRISTODAS PAL thought that of all men interested in the land, the lakhiraj holders were under the greatest obligations to the State, and ought to make full contribution towards the maintenance of roads and other communications which benefited them so much, because they made but scant return to Government for the protection and many other blessings which they received from it. Under the existing Act they had totally escaped assessment, except here and there where the zemindar had been too honest not to conceal rent-free lands in his returns: but even then they had not paid their dues in all cases. It was nothing but legitimate and just that some measures should be devised for the assessment of lakhiraj lands for road cess purposes, and for the easy recovery of the cesses from the owners of such lands.

The hon'ble member in charge had noticed *seriatim* the modifications introduced in the Bill, for some of which he had said he was not individually responsible. As to the definition of "cultivating ryot," it struck BABOO KRISTODAS PAL that it would be practically impossible for the zemindar to distinguish who were cultivating ryots in the sense they were defined in the Bill. The "cultivating ryot" was defined to be a person cultivating himself, or through hired labourers or others, lands held in his name for which he received no rent in money or kind. Now, under this definition all ryots subletting their lands would be excluded, and how would a zemindar know how many ryots in his estate cultivated how much of his lands in the way indicated in the Bill, and how much he underlet. This definition ought to be carefully considered by the Select Committee and adapted to the real circumstances of the country.

With regard to the mode of recovery prescribed by the Bill, viz. that an arrear of cess should be regarded as an arrear of land revenue, he entirely concurred in the remarks which fell from the hon'ble member who had just spoken. This point, as his hon'ble friend had remarked, was very fully considered by the Select Committee on the Road Cess Bill of 1871, and also by this Council when the Bill was passed. And although there were some able officers, as the hon'ble member in charge of the Bill had observed, who were in favour of declaring an arrear of cess as an arrear of land revenue, the preponderance of opinion was in favour of the other view which was embodied in the Act. And BABOO KRISTODAS PAL did not think the history of the working of the cess for eight years had brought to light any new circumstances which would justify the abandonment of the policy that had been adopted in 1871. The hon'ble member remarked that a host of peadahs might be scattered over the country for the collection of the cess, thus doing no end of mischief and hardship to those in default. But from enquiries he had made, BABOO KRISTODAS PAL had not come to know that, under the present system, there was reasonable apprehension for any such calamity as the hon'ble member had imagined. But he believed there had been great hardship and suffering in the realization of the house cess, comprising small sums collected from small owners of houses; and in this Bill it was proposed, he believed rightly, to do away with the house cess. But with regard to the land cess, he did not know if there had been any difficulty in realizing it from landholders; and although the present law did not recognize the principle of treating arrears of cess as arrears of land revenue, practically in many districts the Collector took good care to realize the cess first before the land revenue. He did not think there was any necessity for a change of the law on this point.

Then he came to that part of the Bill which referred to District Committees. From what he had heard and read he must confess that, notwithstanding the earnest endeavours of Government to avail themselves of the services of these Committees, in many districts they were huge shams. The members did not practically take any interest in the proceedings, and they were generally so far off from what he might call the scene of operations that they could not, without great inconvenience to themselves, always attend the meetings of the Committees. Where there were railways or other means of communication, members residing in the mofussil did occasionally attend; but many could not attend without much self-sacrifice, and also did not care for diverse reasons to attend. The Road Cess Committee therefore, it was generally supposed, represented the official views current at the head-quarters of the district; even those non-official members who attended were said to echo the voice of the officials. It was of course not in the power of this Council to make the members of Road Cess Committees take an active part in their business if they did not choose to do so, or to infuse a spirit of independence where it did not exist, or of intelligent or enlightened thought where there was not room for it. But some provision might be made by which, as far as the legislature was concerned, the members of the Committee might be induced to take a greater interest in the administration of the fund. Looking to the

provisions of the Municipal Acts, he found that certain matters were reserved for the consideration of an ordinary meeting, and certain other matters, involving large expenditure, reserved for the consideration of a special general meeting. The quorum for an ordinary meeting was small; that for a special general meeting was large: and generally special general meetings were more largely attended than ordinary meetings. If that principle were introduced into the Cess Act, and if it were provided that works which involved an expenditure of say Rs. 5,000 or upwards should not be decided at ordinary meetings, but should be laid before a special general meeting requiring a larger quorum, perhaps the members might consider these latter matters of greater importance and might feel a greater inducement to attend the special general meetings. BABOO KRISTODAS PAL would certainly make special provision for the meetings which would pass the budget estimates, as these were of the greatest importance to the district.

Then again with regard to appointments. Perhaps hon'ble members were not unaware that there was scarcely another public institution in which grosser jobberies were committed in the appointment of engineers and other officers than under the Road Cess Committees. The Government of Bengal had repeatedly issued instructions for the appointment of proper men to these offices; but those instructions had been little heeded, and private interests and influence had generally carried the day. He was sorry to say that favouritism and jobbery had run riot under many Road Cess Committees. He would suggest the insertion of a provision in the Bill giving power to Government to sanction appointments carrying salaries above Rs. 200 per mensem—a provision like that obtained in the Calcutta Municipal Act. The Chairman of the Corporation was competent to appoint persons to posts the salary of which did not exceed Rs. 200; but all appointments with salaries above that sum must be sanctioned by the Commissioners in meeting. In the same spirit the Road Cess Committee might nominate men to appointments above Rs. 200, but the ultimate sanction should rest with the Government. If the Government had a voice in the matter, he felt sure that the reign of favouritism now existing would come to an end.

Provision had been made for the grant of pensions and gratuities to Road Cess officers. At present the cost of establishment absorbed a considerable portion of the revenues of the Road Cess Committees; and practically there was not a very large surplus left for necessary and useful works. He did not see any reason why the system of pensions should be introduced in the administration of the Road Cess. Pension was not allowed to municipal officers, nor to the officers of Guaranteed Railways, and he did not see why it should be conceded to Road Cess officers. If there was a superfluity of funds, there would be no objection; but as a matter of fact many useful works were starved for want of funds, and he did not consider it desirable that the resources of the Committees should be thrown away by granting pensions and gratuities.

Then the Bill provided that the maximum establishment charge should not exceed one-fourth of the estimated income of each year. It had been

seen in some districts, and he might mention the district of Rajshahye as an example, that although regular estimates of income and expenditure were prepared, the money was not expended, but the establishment was entertained all the same. He thought it would be more equitable to provide that the maximum cost of establishment should not exceed one-fourth of the actual expenditure on all accounts: then the Collector would make it a point to see that the works which had been estimated for were really carried out, or that the money provided for was really spent; surely, the money should not be hoarded and the cess-payers taxed without receiving the *quid pro quo*.

BABOO KRISTODAS PAL thought that the Nuddea Road Cess defalcation case ought to open their eyes as to how the Road Cess accounts should be kept. He was of opinion that some more rigorous checks and restrictions should be imposed on the disbursement of money than were contemplated in the Bill. At any rate he would associate one of the members with the Chairman and Vice-Chairman in the signing of cheques; three pairs of eyes would certainly see more than one.

In the next place BABOO KRISTODAS PAL would draw attention to the suggestion which was made in this Council in 1878 by his friend Rajah Promatha Natha Roy when the Public Works Cess Bill was under consideration. He suggested, in consideration of the trouble and loss to which zemindars were exposed in collecting the cess, that some remuneration should be given to them; and His Honor the President then said in reply that he did not think it was right at that time to propose any alteration of the scheme of the road cess, but continued—

"No doubt the amendment was upon a subject which was worthy of consideration, and His Honor had already publicly said that he was quite prepared to consider what remuneration should be given to the zemindars for the collection of these cesses. But he did not think that the Council would be in a position, without consulting the local officers of Government and others interested, to say what was the exact amount of *moshara* which should be allowed to zemindars to cover their losses. He therefore thought the consideration of this section should stand over until the general amendment of the Act was taken up, so as to enable the Government to enquire what was the best to be done in regard to this matter."

BABOO KRISTODAS PAL thought the time had now arrived for the consideration of that important point, and he hoped the Select Committee would direct their attention to it.

Lastly, there was one point which he found had not been included in the Bill. The Bill provided for the construction and maintenance of roads, bridges, canals (not irrigation canals), and the like; but in some parts of the country, perhaps, a light railway would be more useful than roads. A railway project, combining several districts, if carried through, might develop the resources of those districts more rapidly and effectually than any number of roads. But the Bill did not give power to the Cess Committee to set apart any portion of the cess for such purpose. BABOO KRISTODAS PAL did not propose that any contribution should be given towards the capital outlay, but perhaps some grant-in-aid towards the payment of interest on such capital would go a great way in helping forward railway schemes of the kind he had mentioned. There was, for instance, the Gya railway project which was now hailed

as a blessing by all classes of the people. At one time there was much difficulty in finding means for the payment of interest for the capital to be sunk on that project. The Government looked into the Road Cess Act, but could not find therein any authority for appropriating any portion of the Road Cess Fund to that purpose. But the short experience of the Gya Railway had shown that it had done far more good than the metalled road which had been in existence for years. Similarly, there were other parts of the country where light railways would be very useful and beneficial, and small contributions, by way of payment of interest on the capital sunk on such railways for the first few years, might perhaps give an impetus to the development of the resources of the country which the mere construction of roads and bridges would not afford. He would therefore invite the attention of the Select Committee to the consideration of this important question.

The HON'BLE MR. DAMPIER said, in reply, that he thought it must be admitted that many of the suggestions which had been made by hon'ble members opposite were valuable and worthy of very full consideration at the hands of the Select Committee. It would only be necessary for him to notice one from which he differed *in toto*, and one other which claimed notice from its importance. He differed from the first suggestion of the hon'ble member who followed him. The hon'ble member wished, because registers had now been opened in the Collector's offices in which the shares and interests of the proprietors of each estate were set out, that the liability for the payment of road cess should no longer be joint and several. He wished that the Collector should proceed against each sharer in the estate separately for the portion of the cess due by him. MR. DAMPIER objected to this. He might mention that he remembered the case of a petty estate in Tirhoot in which there were as many as seven hundred shareholders, and although that was an extreme case, it was well known that in many parts of the country there were numerous shareholders in one estate. Now the Bill provided that the separate liability which was secured as regards land revenue by the opening of a separate account under Act XI of 1859 should be extended to these cesses also. If any joint-proprietor wished not to be held jointly liable for the cesses, let him apply under Act XI of 1859 for the opening of a separate account.

The hon'ble member opposite (Baboo Kristodas Pal) had plainly said that much jobbery was going on in the District Committees in making appointments. MR. DAMPIER could only say how shocked he was to hear of this, and he was only glad that it was not in the department of the administration with which he had the honor to be connected. Personally, he knew nothing of the working of the part of the Act which referred to District Committees. But if he should receive instructions from the Government to amend the Bill in that respect, he would of course propose the necessary alterations for the consideration of the Select Committee.

The last point he would notice was the suggestion to make an allowance to the zemindar for the collection of the cess. Perhaps the hon'ble member would be surprised to hear that an allowance was already made and had from the first been made to the zemindar for collecting the cess from his ryots. He

as a blessing by all classes of the people. At one time there was much difficulty in finding means for the payment of interest for the capital to be sunk on that project. The Government looked into the Road Cess Act, but could not find therein any authority for appropriating any portion of the Road Cess Fund to that purpose. But the short experience of the Gya Railway had shown that it had done far more good than the metalled road which had been in existence for years. Similarly, there were other parts of the country where light railways would be very useful and beneficial, and small contributions, by way of payment of interest on the capital sunk on such railways for the first few years, might perhaps give an impetus to the development of the resources of the country which the mere construction of roads and bridges would not afford. He would therefore invite the attention of the Select Committee to the consideration of this important question.

The HON'BLE MR. DAMPIER said, in reply, that he thought it must be admitted that many of the suggestions which had been made by hon'ble members opposite were valuable and worthy of very full consideration at the hands of the Select Committee. It would only be necessary for him to notice one from which he differed *in toto*, and one other which claimed notice from its importance. He differed from the first suggestion of the hon'ble member who followed him. The hon'ble member wished, because registers had now been opened in the Collector's offices in which the shares and interests of the proprietors of each estate were set out, that the liability for the payment of road cess should no longer be joint and several. He wished that the Collector should proceed against each sharer in the estate separately for the portion of the cess due by him. MR. DAMPIER objected to this. He might mention that he remembered the case of a petty estate in Tirhoot in which there were as many as seven hundred shareholders, and although that was an extreme case, it was well known that in many parts of the country there were numerous shareholders in one estate. Now the Bill provided that the separate liability which was secured as regards land revenue by the opening of a separate account under Act XI of 1859 should be extended to these cesses also. If any joint-proprietor wished not to be held jointly liable for the cesses, let him apply under Act XI of 1859 for the opening of a separate account.

The hon'ble member opposite (Baboo Kristodas Pal) had plainly said that much jobbery was going on in the District Committees in making appointments. MR. DAMPIER could only say how shocked he was to hear of this, and he was only glad that it was not in the department of the administration with which he had the honor to be connected. Personally, he knew nothing of the working of the part of the Act which referred to District Committees. But if he should receive instructions from the Government to amend the Bill in that respect, he would of course propose the necessary alterations for the consideration of the Select Committee.

The last point he would notice was the suggestion to make an allowance to the zemindar for the collection of the cess. Perhaps the hon'ble member would be surprised to hear that an allowance was already made and had from the first been made to the zemindar for collecting the cess from his ryots. He

to the careless and improper manner in which appointments were made by District Committees, and they had urged that the Government should take the power of appointment into its own hands in order that properly selected and duly qualified officers of the Public Works Department only should be appointed. These officers were too often more highly paid than necessary. The salaries of the district engineers were often much in excess of the wages the Government paid for the same class of work, and many of the officers whose services had been obtained were of very low professional standing. There was no doubt a great deal of truth in the complaint that local influence was brought to bear on District Committees which made them appoint men who were not qualified and would not have been appointed by the Government. Therefore HIS HONOR should be glad if the Select Committee would take this matter into consideration, and to some extent limit the power of District Committees, not only with regard to the appointment of engineers and other skilled officers, but also put some such restriction as had been proposed as to the amount of salaries to be given to such officers.

Another suggestion which had been made, and which HIS HONOR considered worthy of careful attention from the Select Committee, was that there should be given to the District Committee power to assign funds for the purpose of guaranteeing the interest on a light line of railway, or other means of communication, passing through a district where such a line was of more general use than a road. He believed that enormous good might be done by three or four District Committees joining together and guaranteeing the interest on capital for small lines of railway acting as feeders to main lines. The Gya railway was a case in point. If such a power had existed before the Gya railway was taken in hand, it would have been begun much sooner, for the District Committees were quite willing to come forward at the time and help. They had only to look at the extraordinary success of the Gya State Railway to convince themselves as to the desirability of some such provision being made in the Act. So long as the Gya road was merely a metalled road the cost to the Government was a lakh of rupees a year for maintenance; but although the railway had not yet been thoroughly completed it was paying the whole of the interest upon capital, and it was quite certain that as soon as sufficient rolling-stock was put on the line, it would pay even seven per cent. interest. The District Committees were, he must say, quite willing at the time to assist in a guarantee of the interest, but there were legal difficulties in the way, and the proposal had to be abandoned. HIS HONOR was sure that there were a great many other districts in which similar projects might be undertaken by District Committees, and therefore he should be glad that a section should be devised to enable District Committees to guarantee the interest on lines of railway passing through the district, if the scheme were approved and sanctioned by the Government.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Field, the Hon'ble Mr. Mackenzie, the Hon'ble Kristodas Pal, the Hon'ble Peary Mohun Mookerjee, and the mover, with instructions to report in six weeks.

STREET TRAMWAYS IN CALCUTTA.

THE HON'BLE KRISTODAS PAL moved that the report of the Select Committee on the Bill to authorize the making, and to regulate the working, of street tramways in Calcutta be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. He desired to state that only one communication had been received in respect of the Bill: it was from Colonel Tennant, the Master of the Mint. Colonel Tennant's communication had been considered by the Select Committee, and a clause had been inserted in the Bill saving the rights of existing tramways to cross any tramway constructed under the Act. There was an old tramway running from the Mint to the river bank, and the introduction of that clause was therefore considered necessary. But with regard to the representation of Colonel Tennant, that the passing of the tramway cars would disturb the automatic balances of the Mint, BABOO KRISTODAS PAL had placed himself in communication with the Chairman of the Municipal Corporation, who had been kind enough to obtain for him the opinion of Mr. Kimber, the Municipal Engineer, and of some eminent engineers in the service of the Government.

Mr. Kimber wrote—

"In my opinion the vibration from cars running on the proposed tramway in the Strand Road will not be greater, if as great, as that caused by the existing traffic in loaded vehicles, which is constant. Much may be done by a careful and special construction of road, for such distance at all events as would be abreast of the Mint premises, and under the Act and Agreement we can see to this."

Then Mr. Souttar wrote—

"Since the receipt of Colonel Tennant's communication I have had an opportunity of consulting three eminent engineers (all in Government service) on the point raised. They are all of the same opinion as Mr. Kimber, and indeed expressed their opinion in stronger terms than he has done. I cannot therefore think that Colonel Tennant's anticipations ought to stop the Bill. The automatic balances can, it appears, be removed; possibly, the Assay Office could also be removed further from the road. The tramway will also, it should be remembered, be a convenience to the Mint in several ways."

These opinions showed that there was no necessity for any further amendment in the Bill. BABOO KRISTODAS PAL would therefore proceed with the motion which he had just made.

HIS HONOR THE PRESIDENT said that this Bill had been very carefully considered by the Select Committee, and there did not seem to be any substantial objection to its provisions. He thought it was clear that Colonel Tennant was under a misconception as to the effect of a tramway passing along the Strand Road. It was not likely that any heavier vans and engines would pass along the road than those that now passed the Mint. HIS HONOR did not quite understand the nature of the objection made by Colonel Tennant that the proceedings of this Council were not sent to him for consideration. It was not the custom to send copies of the papers and proceedings of the Council to the Mint Master, and he could not see why it was supposed that exception should be made in this case. Colonel Tennant seemed to have mistaken his position. The proceedings were all published in the Gazette, and if any officer

had anything to say in connection with any Bill which had been introduced into the Council, he had the same opportunity of doing so that others had. The matter had been under discussion both before this Council and before the Municipality, and he thought the special opinion of the able engineers, to which the hon'ble mover of the Bill had referred, made it unnecessary for the Council to make any change in the Bill with reference to the opinion of Colonel Tennant.

The motion was agreed to.

On the motion of the HON'BLE KRISTODAS PAL the Bill was then passed.

CALCUTTA PORT IMPROVEMENT.

THE HON'BLE MR. BUCKLAND moved that the time prescribed for the presentation of the report of the Select Committee on the Bill for amending the Calcutta Port Improvement Act, 1870, be extended for three weeks.

The motion was agreed to.

The Council was adjourned to Saturday, the 24th January.

By subsequent orders of the President the Council was further adjourned to Wednesday, the 25th February.

Wednesday, the 25th February 1880.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble C. T. BUCKLAND,
The Hon'ble H. L. DAMPIER,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble SYED AMEER HOSSEIN,
The Hon'ble A. B. INGLIS,
The Hon'ble KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
The Hon'ble J. B. KNIGHT, C.I.E.,
The Hon'ble C. D. FIELD, LL.D.,
The Hon'ble PEARY MOHUN MOOKERJEE,
and
The Hon'ble MAHARAJAH LUCHMESSUR SING BAHADOOR OF DURBHUNGA.

NEW MEMBER.

The Hon'ble MAHARAJAH LUCHMESSUR SING, BAHADOOR, took his seat in Council.

LICENSE TAX ACT AMENDMENT.

THE HON'BLE MR. MACKENZIE moved for leave to introduce a Bill to amend the law for licensing trades, dealings, and industries. He said: "A full explanation of the political and financial objects and reasons underlying the measure which I now beg leave to introduce has already been made in the Legislative Council of His Excellency the Viceroy. In the matter of this license tax, any

legislation in this local Council can be merely the complement of that devised and introduced in the Supreme Council. We have had specific instructions given to us, and we shall follow them, I am sure, with unmingled satisfaction. First, then, we have to amend the schedules of the Bengal Act so as to exempt from taxation all incomes below Rs. 500 per annum. It may interest hon'ble members to know that the number of persons who actually paid tax in Bengal under each class of the existing schedules stood thus in 1878-79: 401 persons with incomes over Rs. 25,000 per annum paid a fee of Rs. 500; 741 persons making over Rs. 10,000 paid a fee of Rs. 200; 1,656 persons making over Rs. 5,000 paid Rs. 100 each; 4,361 persons making over Rs. 2,500 a year paid Rs. 50 each; 18,120 persons making over Rs. 1,000 a year paid Rs. 20 each; 124,168 persons making over Rs. 250 paid Rs. 5 each; 381,583 persons making over Rs. 100 a year paid Rs. 2; and 184,857 persons on the same income paid one rupee each; thus altogether 715,887 persons were taxed in Bengal. If we assume that of the incomes from Rs. 250 to Rs. 1,000, two-thirds are below Rs. 500, as is probably the case, the numbers liable to tax under the amended Act will stand at 66,668 as against 715,887. The relief given will be seen to be enormous. The sacrifice of revenue will be about 11½ lakhs, or more than half the actual collections of the tax in all Bengal. A further concession to be made to the tax-payers is the abandonment of the plan of insisting on separate licenses in each district. One license will now be held to suffice for the province, and if a man carries on business in more provinces than one, or businesses of different kinds, one license will cover all his businesses wherever situated and of whatever description.

"While making these concessions to the public, the Government finds itself compelled to ask for an extension of the period of limitation placed by the existing Act on the recovery of demands. It is found that unless Collectors are to press proceedings with indiscriminating severity, a little longer time must be given for the institution of proceedings against recusants. We must ask the Council to extend the three months now granted after the close of the year to six.

"These are the points common to the proposed Bill now in my hands, and to the legislation for other provinces now pending in the Supreme Council. There are, however, other amendments of the Bengal law which it is proposed to make. The plan of assessing and collecting the tax through municipal agency has not, on the whole, been very successful. Neither in Calcutta nor in the interior have the Municipal Commissioners taken kindly to the duties which it was sought to impose upon them. Apart from that fact, however, it will be evident that, when the number of assessed incomes is to be so largely reduced, the motive for working through municipal agency has practically ceased to exist. The Collector of the district ought to be able to deal directly with all those who will pay taxes under the new law. In Calcutta the Lieutenant-Governor will decide to what officer the duty of assessing and collecting the tax will be entrusted.

"Again, the exemption of small incomes, and the abandonment of the special procedure in force in Calcutta, make it unnecessary to retain the special Calcutta schedule. It is proposed to have one schedule applicable to all Bengal.

The Hon'ble Mr. Mackenzie.

"It is also proposed to give the Commissioners a specific power of revising the Collector's proceedings.

"These are the main objects of the Bill which I now ask leave to introduce."

The motion was agreed to.

The HON'BLE MR. MACKENZIE said that it would be seen that the amendments were all in the way of the remission of taxation and the relief of the tax-payers. Much time had been lost since the proposal to amend the License Acts first came under consideration, and nearly the whole of the cold weather had slipped by. The new Act would take effect practically from the 1st of April next. It was highly important, as hon'ble members knew, that the Collectors should be set about the preparation of the assessment lists, and revise those drawn up under the existing Act without delay. In Calcutta it would be necessary to make arrangements for the entire revision of the lists. He had therefore to ask for a suspension of the Rules for the conduct of business, in order that the Bill might be pushed on as far as possible at the present sitting.

HIS HONOR THE PRESIDENT declared the Rules suspended.

The HON'BLE MR. MACKENZIE then moved that the Bill be read in Council.

The HON'BLE KRISTODAS PAL said:—It would appear from the remarks of the hon'ble mover of the Bill that the exposition made in the other Council yesterday of the financial position of the State was really the statement of objects and reasons for the Bill now before this Council. Although he was conscious that this Council was not competent to control the financial policy of the Government of India, still he respectfully submitted that it was the duty of every hon'ble member of the Council to consider for himself the reasons which might be adduced for the imposition or continuance of a tax sanctioned by it. In that view he would ask permission to make a few remarks upon the arguments which had been advanced in favour of the continuance of the License Tax. Nothing could be more gratifying than the financial position described yesterday. The prospects of the finances were indeed cheering; they were told that the surplus would have amounted to nearly $4\frac{3}{4}$ millions but for the war in Afghanistan and other abnormal expenses. It was therefore worthy of consideration whether, in the face of such a substantial surplus, it was reasonable or expedient that this Council should continue in Bengal the License Tax Act imposed in 1878.

HIS HONOR THE PRESIDENT observed that he thought the hon'ble member was going rather beyond the question before the Council. The question was whether this Council should alter and amend a law which had been passed by it on a previous occasion, so as to exempt certain classes which had suffered much from the operation of that law, and not to go into the question of the whole policy of the Government of India. The question of a license tax or no license tax was not really before the Council. The question was whether they should amend the law so as to meet the views of the public. It seemed to HIS HONOR that if the Council went into the question of the whole financial policy of the Government of India, they would put themselves into a very false

position; that matter at present was before the Viceroy's Council, and was being considered, and he did not think it was proper or in order for this Council to discuss it on a proposal to amend the License Tax Act.

The HON'BLE KRISTODAS PAL said that if that was His Honor the President's ruling, he must bow to it, but he was under the impression that when a Tax Bill was placed before the Council, it was open to the members to consider the reasons for it.

HIS HONOR THE PRESIDENT thought the Council was bound to adhere to the motion before it.

The HON'BLE MR. DAMPIER believed that, by the Indian Councils' Act, this Council was precluded from touching financial questions, except so far as it was permitted by the Government of India to do so.

The HON'BLE KRISTODAS PAL continued: He would not then touch upon the financial policy of the Government of India, but he hoped he would be permitted to make a few remarks on the shape the Bill had now taken. From what had occurred in the other Council, it would appear that it had been proposed to extend the scope of taxation to other classes than those which were engaged in trades, dealings, and industries. At the sitting of the Viceregal Council held on the 14th November last, and again at the sitting of the 24th December last, it was announced that, while the Government would raise the minimum of taxation to the limit of Rs. 500, it would recoup the loss of revenue by including within the purview of the tax the salaried and professional classes. The arguments in favour of including those classes were very forcibly put by the hon'ble mover of the Bill, but at yesterday's sitting of the Council it was announced that the financial position of the year was such that the Government was not disposed to extend further the scope of taxation. He respectfully submitted that if the tax was to be retained as an equitable adjustment of taxation, he did not understand why the salaried and professional classes were to be excluded.

HIS HONOR THE PRESIDENT said he must again point out that that was not the question before the Council. The Council was not entitled to discuss the financial policy of the Supreme Government. The Council was barred by its constitution from discussing such questions until it received permission to consider them. HIS HONOR had not applied for that permission, nor did he intend to apply for it. The scheme for licensing salaried and professional classes had been avowedly abandoned by the Government of India for reasons which had been given elsewhere, and therefore to discuss it would be mere waste of time.

The HON'BLE KRISTODAS PAL resumed:—With regard to the Bill itself, he fully agreed with the hon'ble mover that the exemption of persons with incomes under Rs 500 per annum would give substantial relief to a large body of tax-payers. But there was one part of the Bill to which he did not agree; he meant the extension of one schedule to Calcutta and the Mofussil alike. In Calcutta there was a heavy municipal license tax levied, and when the Imperial license tax was imposed the Calcutta schedule was adopted for the purposes of that tax. He did not see any reason why that principle should be departed from in this amending Bill, the circumstances remaining the same.

Those who were called upon to pay the Calcutta license tax would also be subject to pay the Imperial license tax if their earnings were above Rs. 500 a year. He thought that, as municipal taxation was very heavy in Calcutta, it would be but bare justice to the tax-payers of this city to continue the schedule as it stood in the original Act.

The HON'BLE MR. MACKENZIE said that, with regard to the objection raised by the hon'ble member opposite as to having one common schedule for Bengal, he might say that the only reason for the adoption of a special schedule for Calcutta in the existing Act was that it was proposed to work the Act through the agency of the Calcutta Municipality. It was thought that it would simplify matters much if, instead of their making a fresh assessment list, the Chairman and Commissioners worked on the same lines as those given in the schedule of occupations in the Municipal Act, according to which the Calcutta license tax was levied. That schedule, however, covered not only trades, but a certain number of professional persons, such as professional accountants, auditors, and others who, under the policy now laid down, were not to be taxed. Even at the time the Act was passed there was a doubt entertained by the Government of India whether it was proper to include such persons, and the schedule was only accepted on the ground that it was extremely convenient to work the Imperial tax in Calcutta on the same lines as the local tax. Now no such reasons remained for continuing the Calcutta schedule. It was quite true that municipal taxation in Calcutta was heavier than in other municipalities. But that was no reason why a general tax like the present one should not be the same in Calcutta as in the interior of Bengal. The Government of India would certainly object, and rightly object, to give practical application to any proposals recognizing the incidence of municipal taxation as a valid ground of objection to the incidence of a general Imperial tax.

The HON'BLE MR. INGLIS said that he concurred in most of the remarks made by his friend to the left (Baboo Kristodas Pal). Although they had been told that the Council was incompetent to discuss the reasons for the introduction of this Bill, it would be a relief to himself and his hon'ble friend, who felt very strongly that the necessity for continuing the tax did not exist, if some mode was afforded to them of expressing their views either by putting a direct negative to the Bill, or by making a motion that the license tax of 1878 should be repealed. He thought that hon'ble members who held those views should have an opportunity of showing that they did not approve of the continuation of the tax, having regard to the prosperous state of the public finances. He had no wish to take up the time of the Council in discussing the matter, but he desired to have some tangible mode of showing his disapproval of the tax in any form under existing circumstances.

The HON'BLE MR. KNIGHT said that, in support of what hon'ble members had already said, he would remark that the principle on which the tax was to be imposed was completely changed by the schedule proposed in the present Bill. It did not follow the lines laid down in the former Act, which were, comparatively speaking, pleasant lines, but an entirely new principle of assessment had been introduced. On that ground he joined with the hon'ble member

opposite in objecting to the schedule which it was proposed to substitute for the Calcutta schedule in this taxation. There was no doubt, as it appeared to him, that the reason why the municipal schedule was retained in the former Act was not simply for the convenience of collections through the Municipality, but because it was felt that the rate of municipal taxation already paid in Calcutta was excessively high, and some consideration was due to the classes who were affected by this Bill. He heartily rejoiced in the great relief from taxation the lower classes would now enjoy; at the same time, it was largely at the expense of other classes whose payments might be largely increased under the new schedule.

His Honor the President said he did not wish to be misunderstood in respect to the course which was open to hon'ble members in discussing this Bill. It was of course open to any hon'ble member who wished to oppose this Bill to vote against it. The result of the vote, however, would be simply that the present Act would remain as it stood, and all the poorer classes, regarding the heavy taxation upon whom the Council had heard so much, would remain subject to the tax as at present. He could hardly suppose that when the Government of India was willing to meet an outcry from the public, and to exempt the poorer classes, any hon'ble member could possibly wish to stop this Bill, and continue the existing license tax on those classes. The question was not between a license tax and no license tax: that this Council could not discuss, for the Government of India had determined that there should be a license tax; but the result of refusing to pass this Bill would be that the Government of India would certainly, without a day's delay, impose it themselves. It was originally intended that the Government of India should pass the Act, but it was upon His Honor's representation that a measure of this sort should be dealt with by the local Council, and not by the Imperial Government, that Sir John Strachey very properly, and with very good feeling, agreed that the Bill should be dealt with by this Council. The Council knew that the license tax was to be imposed throughout India, and they could hardly expect that because they made some difficulty in passing this little amending and relieving Bill, the province of Bengal would be exempted from the license tax, while the rest of India was subject to it. They would simply drive the Government of India to set aside that Council and pass an Act of its own. That would be the only result of the course which some hon'ble members seemed disposed to adopt. His Honor was entirely unable to concur in the proposal which had been made to take cognizance of Municipal taxation as a set-off to the license tax. Municipal taxation was altogether distinct from, and independent of, imperial taxation; persons liable to municipal taxation would remain liable to it whether this Bill was passed or not, and would remain in exactly the same position as they now stood. Municipal taxation was for municipal purposes It was a liability incidental to residence in large cities, and must be set off against the advantages of city life; it was a specific payment made for services rendered in the shape of drainage, roads, water, and lighting. Because people in Calcutta demanded proper lighting, water, and drainage, were they to

be placed on a different footing from the rest of the people of Bengal, and were the people of Bengal to pay for lighting and drainage and water on account of the people of Calcutta? For that was what the hon'ble member's proposal would practically amount to. It seemed to HIS HONOR that the whole position was absolutely untenable. So far as he was concerned he was entirely opposed to any alteration in the schedule. As he had said before as regarded the measure before the Council, if any hon'ble member wished to oppose the Bill, it was open to him to do so, but the result would be that hundreds of thousands would remain liable to be taxed whom the Government desired to relieve.

The HON'BLE MR. BUCKLAND said he was not disposed to trouble the Council with many words, but he wished to express his entire concurrence with the very clear and forcible remarks made by His Honor the President. The first point was as regards the policy of the financial measures of Government, and the second concerned the very great concessions which would be made to the public in the Bill now before the Council. It had been his fortune to help to administer the Act now in force, and he found that there were so many alterations in the Bill entirely in favour of the tax-payers that he was surprised that any hon'ble member should offer to oppose it. He would say one word with regard to the Calcutta Municipal schedule. Practically, that schedule was found to be extremely inconvenient: it was like putting a coat made for one man upon the shoulders of another, the result was that the first estimates of taxation in Calcutta were brought up to about 12 lakhs of rupees; then they had to take the coat to pieces and alter it, and the result was that the assessments had to be reduced to 3½ lakhs. There were certain peculiarities in the Calcutta schedule which made it excessively inconvenient to work, and he would therefore give his full support to the Bill in its present form.

The HON'BLE MR. INGLIS wished to say in explanation that he entirely agreed with those hon'ble members who said that, if the license tax was to be continued, the Council could not have it in a less objectionable form than that which was now proposed, and he fully admitted that very great concessions had been made. He was heartily glad to see the relief afforded to the classes whose incomes were below Rs. 500 a year, and who paid the tax before, and he should be sorry if anything which fell from him would lead the Council to suppose that he was in any way opposed to that concession. His simple reason for rising before was to say that if there was any form by which he could make it clear for his own relief that there was no necessity for continuing the license tax in any shape at present, he should wish to take advantage of such form. But as it appeared that it was incompetent for the Council to take up that position, he could only submit to the decision of the President, and say that he would do all he could to assist the Council in passing the amended Bill.

HIS HONOR THE PRESIDENT remarked that he did not wish to say that it was not competent for hon'ble members to object to the introduction of the Bill, but he would point out that the result of shutting out this measure would be that the Government would have to go on collecting the tax under the existing law.

The Hon'ble Kristodas Pal observed that he had not the remotest intention to oppose the Bill in its present form. He highly appreciated the benefit which the Bill would confer on a large body of poor tax-payers, and if anything he had said should result in the withdrawal of the Bill he should certainly regret it. But his object was to point out that, looking at the statement of the finances made yesterday, there was, in his humble opinion, no necessity for the continuance of the tax. If the forms of the Council did not permit him to express an opinion to that effect, he must bow to the decision of the President. He did not wish that the Bengal License Tax Act should continue in its present form, for it had been a fruitful source of hardship and oppression, and the present Bill would greatly mitigate those evils. But if permitted he should like to say that in his opinion, having regard to the prosperous state of the finances, no case had been made out for the continuance of the tax.

The motion was then agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Messrs. Buckland, Field, O'Kinealy, Inglis, Knight, Kristodas Pal, and the mover, with instructions to report at the next meeting of the Council.

DRAINAGE AND IMPROVEMENT OF LANDS.

On the motion of the Hon'ble Mr. Dampier, the Hon'ble Peary Mohun Mookerjee was added to the Select Committee on the Bill to provide for the drainage and improvement of lands

The Council was adjourned to Saturday, the 28th instant.

Saturday, the 28th February 1880.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*.
The Hon'ble G. C. Paul, C.I.E., *Advocate-General*,
The Hon'ble C. T. Buckland,
The Hon'ble H. L. Dampier,
The Hon'ble A. Mackenzie,
The Hon'ble J. O'Kinealy,
The Hon'ble Syud Ameer Hossein,
The Hon'ble A. B. Inglis,
The Hon'ble Baboo Kristodas Pal, Rai Bahadoor, C.I.E.,
The Hon'ble J. B. Knight, C.I.E.,
The Hon'ble C. D. Field, LL.D.,
The Hon'ble Baboo Peary Mohun Mookerjee,
and
The Hon'ble Maharajah Luchmessur Sing Bahadoor of Durbhunga

LICENSE TAX ACT AMENDMENT.

The Hon'ble Mr. Mackenzie applied to the President to suspend the Rules for the conduct of business, to enable him to proceed with the remaining

stages of the Bill to amend the law for licensing trades, dealings, and industries. The majority of the Council had served on the Select Committee and signed its report.

The PRESIDENT declared the Rules suspended.

The HON'BLE MR. MACKENZIE then moved that the report of the Select Committee on the Bill to amend the law for licensing trades, dealings, and industries be taken into consideration in order to the settlement of the clauses of the Bill. The Bill, he said, had received full consideration in Select Committee, and he believed that as far as details went it was open to no objection. It appeared to the Committee that, as now only a comparatively limited number of persons would be liable to tax, it was only fair that individual notices should be served upon those who were assessed. As a matter of fact, under the rules laid down by the Board of Revenue and sanctioned by the Lieutenant-Governor, notices were already served on all assessees of the first four classes under the existing schedules, and the proposal now made was only making obligatory under the Act a practice which the Government had already recognized under the rules. The general notification would embrace the provisions of section 6 and the schedule of the Act, and would bind every person liable to the tax in the district; but a separate notice would be served upon all assessees known to the Collector and entered in his list.

MR. MACKENZIE might also notice that in section 6 the Committee had provided that one license should suffice for each person within the provinces subject to the Lieutenant-Governor of Bengal. In the Bill before the Council of the Governor-General it was provided that one license might suffice for all the provinces in which license tax was levied. It was impossible for this Council to enact any provision to that effect, because the Council of the Lieutenant-Governor had no power to legislate for any other provinces than those which were subject to His Honor's administration. But the Bill passed for Bengal would be read with the Bill passed by the Imperial Council, and thus a double assessment upon the same individual would be, as a rule, prevented.

The only other alteration of importance which was made by the Committee was that power was given to the Commissioner of Revenue to revise the proceedings of the Collector, not only in cases where the Collector acted as a court of first instance, as it were, but also when he might deal with the assessments and proceedings of his subordinates. That was also an amendment of some importance which MR. MACKENZIE had no doubt would be recognized as an improvement. The other changes made in the Bill were only such as he had intimated when asking leave for its introduction.

The HON'BLE MR. INGLIS wished to say a few words in justification of the remarks he had appended to the report of the Select Committee. Hon'ble members were aware that he considered no case had been made out for the continuance of this tax, and in the Select Committee's report he stated his opinion that its operation should be for the present limited to one year, and that the proceeds of the tax should be strictly applied in providing for the relief and prevention of famine. He did not wish to take up the time of the

Council in moving amendments to give effect to those views, when he knew that there was not the least chance of their being assented to by Government; but he craved the President's permission to state shortly his reasons for coming to those conclusions. In order to state those reasons fully, it would be necessary for him to criticise the financial policy of the Supreme Government. This, as hon'ble members were aware, it was not competent for him to do in that Council, and therefore he should endeavour to confine himself strictly to reasons which it seemed to him appeared on the face of the Bill now before us.

In introducing the Bill, the hon'ble member opposite stated that the amendments which had been made would afford relief to over half a million of tax-payers, and that the present Bill would affect only 66,000 odd persons throughout the whole of Bengal. While approving, as the Council must do, of the relief afforded by this Bill to so many small traders, the Members of Council ought not to lose sight of the fact that, by exempting from taxation, mainly for reasons of policy, such a large number of persons, they in fact removed the base of the edifice, as he had heard it expressed within the last few days. The result would be that the whole superstructure resting upon this base must inevitably be weakened and would ere long fall to pieces. Every one of the 66,000 persons upon whom the tax now fell would to a man feel he had a grievance, and would not be slow to air it. Formerly, when the poorest traders were taxed along with their well-to-do neighbours, the latter were prevented from making any great complaints, by the feeling that the tax pressed with much greater severity upon those below them in the social scale. Now this feeling would cease to operate, and Government would find itself in the presence of a powerful and discontented section of the community, who possessed the means and an organization for making their voice heard in a way that would probably cause considerable embarrassment. The exclusion of the professional and official classes from the operation of the tax would in many quarters intensify the dissatisfaction which existed. One way of disarming that opposition would be to limit the operation of the tax to one year, as he had suggested. The persons affected would then have some assurance that the subject would be reconsidered, and relief probably afforded them a year hence, when he hoped circumstances would favour a more equitable view of this question than that which at present found favour in influential quarters; or if that were not the case, good grounds would then have to be adduced for reimposing the tax.

Much of the existing opposition to the tax would, he believed, be removed if his other suggestion were adopted, that the proceeds be devoted strictly to the relief and prevention of famine. That was what Government promised to do when they imposed the tax two years ago. Their argument was—"We are imposing a special tax on the trading classes because they are the persons who mainly benefit in seasons of scarcity," and a promise was made that the money levied from a particular section of the community would be applied in a special way. Without admitting the soundness of the argument that famine taxation should fall mainly on the trading classes, he need only say that, if the proceeds of such

taxation were applied to the general purposes of the State, as undoubtedly they had been, the special argument put forward by Government to justify such taxation fell to the ground. Unless the money was applied as promised, the tax in its present form could not be justified, as this was not the case of a tax which fell upon the whole community, but one imposed upon a selected section of the public who were already called upon to bear their share of the general public burdens. Government said they found it inconvenient to have their hands tied by being bound to spend the money in a particular way, but that applied with equal force to road and public works cesses. Those who paid those cesses had, as he understood, a guarantee as to the application of the money they paid, and that was all he asked in this case. After what had happened, he did not think those affected by this measure could be expected to rest satisfied with a mere statement as to the good intentions of the Government in this matter. He thought the Government should be anxious to relieve itself from the dilemma in which it was placed by conceding the point which he was now urging, and he hoped this view would be pressed on the attention of the Government of India by the Members of the Supreme Council.

The Hon'ble Kristodas Pal said that, after what had occurred at the last meeting of the Council, he did not intend to open his lips again on the subject; but he felt encouraged by what had fallen from his hon'ble friend to his right, and he wished to add a few words in support of what he had said. He agreed with the hon'ble member that, if the operation of the tax were limited to twelve months, at the expiration of that period it would be open to the Government to consider whether, in the then state of the finances, it would be necessary or expedient to retain the tax or not. The retention of the tax being now a part of the financial programme of the Government of India, it might not be open to this Council to consider the question of repealing it altogether. But if the Council would take into consideration the question whether the operation of the Bill should be limited to twelve months or not, he thought it would not militate against the policy which the Government had announced. It was true that the Government now looked upon the license tax as a part of the general revenues of the State, but there was nothing in the financial statement submitted in the other Council which showed that the Government would not be prepared to consider this time next year the question of continuing the tax or not. Such being the case, Baboo Kristodas Pal thought it would not be inconsistent with the present financial policy of Government to limit the duration of the tax to one year.

With regard to the other point noticed by his hon'ble friend, to wit, that the proceeds of the tax should be applied to famine purposes as originally contemplated, he believed there was no difference of opinion on that subject. The license tax formed a part of the scheme of taxation intended chiefly for the purpose of promoting works which would be a protection or insurance against famine. That object was clearly set forth in the preamble of the Acts which were passed both by this and the Imperial Council, and the declaration in the preamble was also supported by the assurances given in the Council. The Hon'ble the Financial Member in his last Budget speech also

pointed out that the Government had promised to carry out important public works calculated to serve as a protection from famine; and if the Government had not been able to carry out its intention, it was in consequence of orders received from the Home Government restricting public works expenditure. In India there was no difference of opinion upon this point that the proceeds of the famine taxes should be applied to famine purposes, that was to say, by the execution of works which would be in the nature of an insurance against famine. His countrymen did not object to the license tax, because they were assured that it was intended to serve as a Famine Insurance Fund, for the mitigation of the sufferings of the people from famine and for their future protection from similar calamities. But if the tax, as was now proposed, was to be included as a part of the general revenues of the State, those grounds which were considered as specially justifying the tax no longer existed, and the people therefore would have legitimate reason to complain of the misappropriation of the tax. He thought it would have been both reasonable and just if the original intention of the license tax had been adhered to, and its proceeds were set apart as a fund applicable to the prosecution of works calculated to operate as an insurance against famine.

With these remarks he would support the views expressed by the hon'ble member who had preceded him.

The Hon'ble the Advocate-General proposed to add a few words on the motion. With regard to the proposal that the Bill should be merely limited to one year, he had to observe that such a proceeding on the part of the Council would be based upon a wholly mistaken idea of the scheme according to which the tax was raised. All those who remembered the observations made by Sir John Strachey on the occasion when the tax was introduced, would recollect that the reasons which induced the Government to promote the measure, were that famines had lately been recurring, and that it became necessary to provide for them. Further consideration of the subject showed that the tax was intended to be, if not permanent, certainly not of the transitory character which this Council would assign to it if they limited the Bill to one year; and although he would join in the hope thrown out by the hon'ble members who had spoken, that the time might come when Sir John Strachey might reconsider the advisability of either abandoning or lessening this tax, still, under existing circumstances, he did not think it would be right or judicious for this Council to adopt the suggestion which had been put forward by the hon'ble member opposite (Mr. Inglis).

With regard to the other subject, that there should be an assurance that the proceeds of the tax should be devoted to the particular purpose for which it was raised, this Council could not be called upon to give that assurance. It had been given by the Government of India, and on that assurance this Council must rely. But if it were intended that section 30 should be amended in such a manner that there should be some directions contained in it that the amount collected by this tax should be carried to a separate account, and that the money should not be touched except for purposes connected with famine, such a proceeding would be wholly abnormal. The Government, in making up

a budget for a particular year, and putting into it various items of expenditure for the coming year, such as military and civil expenditure, and so forth, professed to deal with certain taxes for general purposes of expenditure; it did not specify that particular taxes should be devoted to particular purposes, or profess to open out different heads of account. It would be unreasonable on the part of this Council to require that the amount of money which is to be raised for purposes of famine should be carried to a separate account.

The Government of India, in raising a tax for probable expenditure on account of famine, did no more than it did in raising other taxes for other probable expenses; and such tax was as much a part and parcel of the general scheme of taxation as any others raised for any other purpose. It would not be right to fetter the hands of the Government by any such declaration as was required. Moreover such a proceeding would be found most inconvenient. For instance, certain revenue may fall off, while other revenue might increase beyond reasonable expectation, and if the proceeds from each tax were to be carried to a separate account, and kept religiously apart, the Government might be under the necessity of borrowing sums of money to meet certain expenditure, though it might have large sums of money in hand. It would therefore be impracticable to put any such restriction and do what was proposed. Furthermore, he thought they were legislating in this matter in a subsidiary manner, and the arguments put forward could not very well be urged in this Council.

His Honor the President said he understood there was, as he believed, no substantive motion before the Council, but the hon'ble gentlemen who had spoken desired to express their views generally on the subject of the taxation. He thought the actual practical difficulty in the matter had been very fully expressed by the Advocate-General. So far as regards the hope held out by the Government from time to time, that the famine taxation raised during the past two years should be spent on works of a character likely to prevent famines, His Honor could only say that everything which had been said by the hon'ble members had his fullest possible sympathy and support. Nothing could be more shortsighted than the abandonment of that great scheme of public works which was inaugurated by Sir John Strachey and supported by His Excellency the Viceroy, and which, he believed, they were as anxious to see carried out as anybody else could be. But unfortunately a great panic arose in England in regard to the future financial prosperity of India, which His Honor thought was a mistaken notion, and in no way justified. It was to that that the country owed the suspension of public works, and not to any disinclination on the part of the Government of India to carry out the policy inaugurated for the prevention of famines. He hoped that now that it had been shown that the finances of India were in a very different condition from that in which they were supposed to be, the restrictions suggested by the Parliamentary Committee would be withdrawn, and he hoped the opinions expressed in the Council that day would do good. No one could be more anxious than His Honor was, and he thought he could give the same assurance on the part of the Viceroy, to see that prohibition withdrawn; but it would be impossible to

lay down that this money must be credited to a particular separate account, and stored if unused, whilst the Government was borrowing money to carry on a war, or for any other great public purpose.

The motion was agreed to.

On the motion of the HON'BLE MR. MACKENZIE the clauses of the Bill were considered for settlement in the form recommended by the Select Committee.

The HON'BLE KRISTODAS PAL said he wished to refer the Council to the last paragraph of section 30, in which it was stated that the residue (if any) of such nett amount should be carried to the credit of the local Government of Bengal. He wished to ask if any residue of the nett amount of the tax had been carried to the credit of the local Government, or whether it was so intended.

The HON'BLE MR. MACKENZIE said that no part of the tax had as yet been carried to the account of the local Government. Unfortunately the proceeds of the tax had fallen short by some lakhs of rupees of the amount which was expected to be raised, and the Government of India had received the entire sum collected, less only actual expenses. As regards the future, the local Government could only hope that the exigencies of the Imperial Exchequer becoming less pressing, there would be some residue left for provincial purposes, in which case it would be devoted to carrying out that plan which the Lieutenant-Governor had so much at heart,—namely, the development of light railways in those parts of Bengal where they would best serve the end of averting famine and facilitating communication.

On the motion of the HON'BLE MR MACKENZIE the Bill was then passed.

CONTAGIOUS DISEASES AMONG ANIMALS.

THE HON'BLE MR O'KINEALY moved that the report of the Select Committee on the Bill to provide against the spreading of contagious diseases among animals be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. He said that hon'ble members were aware that the Bill had received careful attention at the hands of the Select Committee, which had held numerous sittings, and as it now stood, it differed materially from the Bill brought into Council. In accordance with the suggestions of the Government, the Committee had restricted the application of the Bill to diseases connected with horses only; but in order that the Government might be in a position to extend it hereafter, the Committee had altered the definition of "disease." Originally, too, there was no provision in the Bill to prevent the spread of disease except by the destruction of diseased animals; but now the Lieutenant-Governor was empowered to erect a hospital, and if such a hospital were erected in Calcutta, as MR. O'KINEALY hoped it would be, the expenditure would be met partly by the fines imposed under the Act, and partly by the surplus of the hackney carriage fees. Two other important sections had been added to the Bill—one empowering Magistrates to reward police officers engaged in the suppression and prevention of disease, and the other imposing certain penal

restrictions upon police officers to prevent their abusing the powers conferred upon them by the Bill. MR. O'KINEALY believed that the Bill, if passed, would be of great benefit to the public.

The motion was agreed to.

On the motion of the HON'BLE MR. O'KINEALY the Bill was then passed.

CALCUTTA PORT IMPROVEMENT ACT AMENDMENT.

THE HON'BLE MR. BUCKLAND moved that the report of the Select Committee on the Bill for amending the Calcutta Port Improvement Act, 1870, be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. The report of the Select Committee which was in the hands of the Council was dated the 11th of February, but the Bill could not be brought forward more promptly. The amendments made by the Committee were almost all concerning petty matters. In one section the Committee provided that the Government loan should be repaid in equal half-yearly instalments within 30 years, and empowered the Commissioners, with the sanction of the Government, to postpone the period of payment of any instalment, and at their discretion to prepay any instalment before it was due. He should have occasion presently to allude further to that point. With regard to the two points which were raised when leave was given to introduce the Bill, it would be seen that the Committee had omitted the provision contained in the original Bill, empowering the Commissioners to make bye-laws to regulate the supply of water to the shipping, so that the views expressed by the hon'ble member on his left (Baboo Kristodas Pal) had prevailed. The Committee had also omitted section 20, as the Commissioners' tramways were not required for passenger traffic. The Committee had also provided a new form of debenture, and the Bill provided that that form might be altered if necessary.

The HON'BLE KRISTODAS PAL said he desired to express his satisfaction that amendments had been made in the Bill in reference to the points which he had noticed, and he thought those amendments would meet the objections which he had raised.

The motion was agreed to.

The HON'BLE MR. BUCKLAND said he had to apologise to the Council for proposing to introduce amendments in the form in which he had given notice of them, and he might say that it was very inconvenient that such amendments should be brought forward. But there were peculiar reasons by which he was compelled to introduce these amendments in their present form, instead of their being included by the Committee in their report. The fact was that the Bill now before the Council was drawn on certain lines laid down by the Financial Department of the Government of India, and the object of the Committee had been to produce a Bill which would be acceptable to that Department, and with that view, when the Committee were sitting, they consulted the Financial Secretary, and he was also consulted by the Vice-Chairman of the Port Commissioners, and some time later the Bill as

amended by the Select Committee was sent to him; but the Financial Department was then busily engaged in the preparation of the budget. Afterwards, when the budget had been introduced, the Bill was returned to MR. BUCKLAND from the Financial Department, with the suggestion that the amendments now proposed might be introduced. Formerly there were two clauses in the Bill. By sections 5 and 6 provision was made, first, for the repayment of principal and interest; secondly, for the postponement of payments, and provision was also made for anticipating the payment of instalments falling due. Those three things were provided for in the amended Bill by section 6, and then came section 8, which gave the Commissioners power to repay before due date, but not to pay any sum of less than Rs. 10,000. The amendments MR. BUCKLAND put before the Council now, when taken collectively, amounted to this. The whole of section 8 would be struck out. The provision relating to the payment of equal half-yearly instalments was retained, and power was also taken as before to pay instalments before they became due, in which case no payment was to be made on the due date of the instalment. All that was in effect the same as the provisions contained in the Bill. But the proviso which it was proposed to add to section 6 seemed to be almost identical with the second proviso in the section. Unless he asked the Council to accept the amendments as put before them, he was afraid there might be some difficulty in getting the sanction of the Government of India to the Bill; otherwise he would have preferred the form in which the provisions were specified in the Bill. He would move the first of the amendments, namely, to substitute the words "the Commissioner may, however," for the words "provided also that the Commissioners may" in lines 12 and 13 of section 6.

After some conversation, the HON'BLE MR. BUCKLAND by leave of the President withdrew the motion, and moved that the proposed amendments be referred to the Select Committee for consideration.

The motion was agreed to.

The Council was adjourned to Saturday, the 13th March.

Saturday, the 13th March 1880.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble G. C. Paul, C.I.E., *Advocate-General*,
The Hon'ble C. T. Buckland,
The Hon'ble H. L. Dampier,
The Hon'ble A. Mackenzie,
The Hon'ble J. O'Kinealy,
The Hon'ble Syed Ameer Hossein,
The Hon'ble Kristodas Pal, Rai Bahadoor, C.I.E.,
The Hon'ble J. B. Knight,
The Hon'ble C. D. Field, LL.D.,
and
The Hon'ble Peary Mohun Mookerjee.

CALCUTTA PORT IMPROVEMENT ACT AMENDMENT.

The Hon'ble Mr. Buckland, in moving that the further report of the Select Committee on the Bill for amending the Calcutta Port Improvement Act, 1870, be taken into consideration in order to the settlement of the clauses of the Bill, said that it would be in the recollection of the Council that certain amendments had, at the last meeting, been referred back to the Select Committee for further consideration and report. The Select Committee had met, and after consultation with the Financial Department of the Government of India, the requirements of which high authority had been fully satisfied, the Committee presented the Bill as now amended. Section 8 had been allowed to remain, a few minor alterations had been made in section 6, and a section had been added making clear the Commissioners' powers to work tramways for carrying goods.

The motion was agreed to.

The Hon'ble Mr. Buckland also moved that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

The Hon'ble Mr. Buckland then moved that the Bill be passed.

The motion was agreed to.

COMPULSORY VACCINATION.

The Hon'ble Kristodas Pal said he had been asked to take charge of the Bill to render vaccination compulsory, and he did so with much pleasure. He considered a compulsory Vaccination Bill a legitimate corollary of the Inoculation Prohibition Act. That Act was passed in 1865; it came into immediate operation in Calcutta and its suburbs; it had also been gradually extended to some of the first class municipalities and military cantonments in Bengal. When he declared himself in favour of a compulsory measure of this kind, he did not mean that its extension should be general. He wished to restrict

the compulsory law to Calcutta and its suburbs; and if power was given in the Bill to Government to extend it to first and second class municipalities, that provision had been introduced at the special instance of Government. He might, however, mention that the Government was not desirous of extending the compulsory Act throughout Bengal; it proposed to take the necessary power in order to meet sudden emergencies in case of a widespread epidemic of small-pox. But this question would be discussed by the Select Committee to whom the Bill might be referred hereafter.

The case of Calcutta was quite different. Here the process of education in vaccination had been going on for a long time past. Here the first step in this direction had been taken by some of the conservative and leading Hindu families before the prohibition of inoculation by legislative enactment was even thought of by Government. Resting the authority for vaccination on a text of Dhunnuntari, the father of Hindu medicine, the late Rajah Sir Radhakant Deb, the most esteemed leader of the orthodox Hindu community, promulgated, if Baboo Kristodas Pal might so express himself, the doctrine of vaccination; and as education had progressed, the old prejudices against it had worn off. Inoculation was prohibited in 1865; and for the last fifteen years Dr. Charles, the Inspector-General of Vaccination, had proved the best educator of the people of Calcutta in the matter of vaccination. The position attained by him was thus described in his own words:—

"The following propositions may be assumed as capable of proof. If any question should arise as to the advisability of accepting them without evidence, I shall be prepared to adduce the proofs when called upon:—

"(*a*) The great majority of the resident population in Calcutta, amounting perhaps to such a high figure as one above that represented by 95 per cent., have accepted vaccination, or would accept it, as a matter of course, were there any children in the family, and would, if left to themselves, continue to have their children vaccinated.

"(*b*) Among the floating population, any man, woman, or child that can be caught by a vaccinator can be, with greater or less difficulty, vaccinated. The exceptions to this proposition are so few as might possibly be represented by such a small figure as 1 per cent.

"(*c*) Besides the above classes there is a distinct and separate class which consists chiefly of adult males among the floating population, who, from causes inseparably connected with their position, cannot be singled out or caught hold of by the vaccinators. Among this class a considerable percentage consists of unprotected persons. The percentage, though not a large one in itself, may be taken to represent a very considerable number indeed of unprotected persons who constitute a source of great danger to Calcutta. These persons catch small-pox when it prevails, and form so many centres of contagion that it is very difficult for vaccinators to keep pace with an epidemic when it has once begun among them.

"(*d*) The vaccination, as it has been practised in Calcutta since the year 1864, though in reality only a voluntary system, has virtually amounted to compulsory vaccination. The law it is true does not compel a man to be vaccinated; but the Vaccination Department bring so much pressure to bear on the population that so far as relates to any man, woman, or child belonging to certain classes, their vaccination amounts almost to a certainty; the cases are few indeed in which repeated representations addressed to any unprotected persons fail in inducing them sooner or later to receive vaccination.

"Based on the knowledge of the above facts the argument for compulsory vaccination simply amounts to this. Almost all the educated and the thinking members of the community have already accepted vaccination of their own accord. The uneducated and unthinking

part of the population, from one reason or another, already undergo vaccination; the interests of neither will be affected by a vaccine law. The law will chiefly affect a number of adults who come to live among a vaccinated community. Although this number is small when calculated in relation to the general population, yet in itself it is so large as to constitute a very serious source of danger even to a protected population. It is chiefly these people who die during an epidemic of small-pox. A compulsory vaccination law would doubtless save some of their lives; it would do more than this—it would prevent these persons from becoming so many foci of contagion which disseminate small-pox among a comparatively well vaccinated community, who are thus exposed to the inconveniences attending on an attack of this disease, although they have availed themselves of the only means at their command to ward off such a visitation."

A compulsory vaccination law would not thus offer any violence to the feelings of the vast majority of the people of Calcutta. It would simply give legal sanction to a practice which had been already voluntarily accepted by most of his countrymen dwelling in this great city.

Nevertheless prejudices existed among certain sections of the community. Their adherence to tyrant custom was so strong that no amount of persuasion or moral pressure would avail. He witnessed a sad illustration of this fact in his own neighbourhood during the epidemic of 1877-78. The braziers of Kansariparah formed a compact guild; they had many estimable qualities; they were an industrious and thriving class; they were independent in spirit, and, as a body, unsophisticated in mind and manner; but they had a strong prejudice against both inoculation and vaccination. During the epidemic there was scarcely a house among them which was not converted into a house of mourning. Young cherubs were snatched away from the bosoms of their mothers; one, two, three successively fell victims to the fell disease in the same house, and still the fortress of prejudice remained impregnable. The army of vaccinators laid siege to it, but without effect; the chief of their clan capitulated by setting an example in his own house, but the mass remained unmoved. At last some of them gave in; but it was then too late. Now, he submitted, a double responsibility rested upon these men. As parents and guardians of young children who could not think for themselves, and who were entirely under their control, they were bound to protect their lives from the fatal disease; and as neighbours, they had no right to put the whole neighbourhood in danger by gratifying their own unreasoning prejudice. To meet cases of this kind a compulsory law was absolutely necessary. The only objection he had heard against such a law was that it would be an arbitrary interference with the liberty of the subject. Those who took this objection forgot that the whole course of penal legislation against the committal of nuisances might be objected to on that ground. They might as well say that the Legislature had no right to restrain a man from committing breaches of the peace, because it interfered with the liberty of the subject, or prevented him from doing what he in his sweet will might be pleased to do. They forgot that when men formed members of a community, individual liberty ought to be made subservient to the good of that community. An individual was but a component part of a community; and if the interests of the community required a certain sacrifice, no individual member of it should complain.

It was not necessary for him to dwell at length on the subject. He might, however, remind the Council that the British Government had been engaged in diffusing vaccination from the earliest period of its establishment in this country. Vaccination, he read in Dr. Green's report on vaccine operations, was introduced under the auspices of no less a personage than Lord Clive in 1802. The earliest report on vaccination in Bengal was that of Dr. Shoolbred, Surgeon to the Native Hospital at Calcutta for the year 1804, published by order of Government in 1805. The total number vaccinated during 1804 in the Bengal Provinces (including, besides, Prince of Wales Island and Fort Marlborough) was 8,140. The office of Superintendent-General of Vaccination seemed to have been instituted at Calcutta early in this century. The first grand step in advance was taken in Bombay under the enlightened rule of that eminent statesman, Monstuart Elphinstone, in 1827. In 1854 the Bombay system was introduced into the North-Western Provinces under the able superintendence of Dr. Pearson. In Madras no proper system was introduced till 1865. Vaccination under a European Superintendent was introduced into the Central Provinces in 1864, and into Oudh in 1867. Thus our Government had taken an active part in this work of humanity from the beginning of this century.

But the vaccine operations of our Government had hitherto been carried on on the voluntary principle. In 1877 a compulsory law was passed for Bombay. A Bill had been introduced in the Council of the Governor-General giving power to the local Governments which had no local legislatures to extend the benefit of vaccination to municipalities and military cantonments within their respective territories. He thought that the time had arrived for the enactment of a similar law for the metropolis of British India.

As regards the details of the Bill, he would not trouble the Council with any remarks at the present stage. The questions as to what kind of lymph should be used; whether any fee should be charged for vaccination; whether the poorer classes should be provided with gratuitous vaccination, and if so, under what conditions; whether females who, according to the custom of the country, could not appear in public, if too poor to pay the fee, should be vaccinated free of charge, and what procedure should be followed in enforcing vaccination: all these questions would be noticed when the Bill would be read in Council.

He now moved for leave to introduce the Bill.

The Hon'ble Syed Ameer Hossein said:—The necessity for legislation on the subject of compulsory vaccination had been very clearly and forcibly put forward by his hon'ble friend, and he had nothing to add to it except that he considered that the enactment of the proposed law would serve to remove the present anomalous state of things. For the last fifteen years a law was in force prohibiting inoculation. This Act had been extended to almost all the large towns and municipalities in the mofussil. Side by side with this Act there was a system of *optional* vaccination. This he considered to be an anomaly, for the simple reason that in the places in which inoculation was interdicted vaccination ought to be insisted upon, otherwise a large number of innocent children would fall victims to the ravages of the fell disease, small-pox, when it broke out in an epidemic form.

The Hon'ble Kristodas Pal.

A similar Bill had been introduced in the upper Council by his hon'ble friend Syud Ahmed, Khan Bahadur, and had been opposed by certain local Governments on the ground that the measure was not acceptable to the people. SYED AMEER HOSSEIN attributed this opposition on the part of the people to the backward state of education in those parts of the country; and he trusted that no such objection would be made on behalf of enlightened and educated Bengal, especially when the Bill about to be introduced in this Council had for its mover his hon'ble friend Baboo Kristodas Pal, who was deservedly held in great respect by the people of all classes in Bengal.

As for the province of Behar, His Honor the President was aware that Mahomedans had no possible religious grounds to urge against the system of vaccination; and the Hindus residing in large towns and municipalities had for many years past been familiar with the operation of vaccination and appreciated its benefits. While a sub-divisional officer in a Behar district, he had introduced the administration of the prophylactic with great success by winning over a large number of the Brahman inoculators and appointing them as vaccinators. They had gladly exchanged their virus and bunches of needles for the lymph and lancet, and he had given them full liberty to perform the poojah usually offered during the first nine days after the operation. His experience was that so long as the Government did not interfere (as he had no doubt it would not) with the rites of the poojah, there was no fear of opposition on the part of the Hindu priesthood.

The motion was agreed to.

RECOVERY OF PUBLIC DEMANDS.

THE HON'BLE MR. FIELD, in moving for leave to introduce a Bill to amend the law for the Recovery of Public Demands, said that the subject was one which had already engaged the attention of the Council some years ago in 1868, when Act VII of that year was passed and placed upon the Bengal Statute-book. That Act was prepared by a former learned Advocate-General, Mr. Cowie. The object of the Act was twofold. It first amended the Revenue Sale Law—Act XI of 1859; that is, the law for the recovery of arrears of land revenue by the sale of the estate upon which those arrears had accrued. In the second place it provided a procedure for the recovery of certain demands due to the State. The nature of that procedure was this. A public officer of Government was empowered to certify that a certain sum of money was due, and to this certificate was given the force of a decree. This decree is executed as the decree of a civil court, but with this difference, that the machinery employed in executing it consists of the Collector and his subordinate officers instead of the ordinary machinery of the civil courts. In all countries the State—the Exchequer—has reserved to itself a special and peculiar procedure for the recovery of certain dues and debts owing to itself. Between private individuals the ordinary practice is that a person to whom a debt is due resorts to the civil court, and after an adjudication upon the rights of the parties, the court embodies this adjudication in a decree, the execution of which enables one person, the plaintiff, to compel another person, the defendant,

to pay the debt justly demandable from him. In the case of the State, in most countries the Government has declined to resort to the ordinary tribunals, and it has reserved to itself a special procedure to enforce its own demands. In this country from the earliest period there has been a difference. In all cases of disputed right the Government has submitted itself to the jurisdiction of civil courts. In this principle, as a principle, no change was made in 1868, and it is not proposed to make any change now. But there are certain demands in the nature of taxes, fines, and other dues, in respect of which the only real question is whether they have been paid or not, and as to the right of recovering which no question arises. It is in respect of this class of claims, then, that the Act of 1868 provided a special procedure, and that procedure it is on the present occasion proposed to maintain and improve. In 1868 it was attempted to enumerate and classify the particular demands to which this procedure should be made applicable. The Statute-book was, however, then in an uncertain and confused state, and it was extremely difficult to know what portions of the old Bengal Regulations were in force and what portions had been repealed or modified. As a natural consequence, the classification attempted in 1868 was in the course of a few years found to be incomplete, and in 1875 a short amending Bill was brought into this Council and passed. In the course of the few years that have since elapsed, the working of the Act of 1868, and the experience derived from its working, have brought to light further omissions; and now that the Statute-book has been brought into a state of order, and it is known exactly what old Regulations are in force and what have been repealed, it is possible to attempt a complete enumeration and classification of those items of Public Demands created by existing Statutes, which it is desirable to bring under this special procedure. What then the Bill proposed to do is this: it would repeal so much of the Act of 1868 as was connected with the second object already stated, viz., the recovery of public demands. That portion of the Act which was connected with the realization of land revenue by the sale of estates, and which was an amendment of Act XI of 1859, it was not intended to touch. The second portion it was proposed to repeal, and to enact in an amended and more complete form. It has been attempted to give a complete enumeration of all those public demands created by the existing law which it has been thought desirable to recover by this special procedure, and a clause has been added enabling future Acts by a few words to refer to this special procedure, so that in the case of any new demand, or tax, or fine, or due, a few words introduced into any future Act will make it recoverable under this procedure. The Bill has been drafted, and, if this motion is allowed, will at once be placed in the hands of hon'ble members. The Statement of Objects and Reasons appended to it sets forth fully what it is proposed to do. He would not therefore trouble the Council with further details, some of which are technical, and many of which are not very intelligible apart from the text which they explain. With these remarks he begged to move for leave to introduce the Bill.

The motion was agreed to.

The Council was adjourned to Saturday, the 20th instant.

The Hon'ble Mr. Field.

Saturday, the 20th March 1880.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble G. C. Paul, C.I.E., *Advocate-General*,
The Hon'ble C. T. Buckland,
The Hon'ble H. L. Dampier,
The Hon'ble A. Mackenzie,
The Hon'ble J. O'Kinealy,
The Hon'ble Syud Ameer Hossein,
The Hon'ble Kristodas Pal, Rai Bahadoor, C.I.E.,
The Hon'ble J. B. Knight, C.I.E,
The Hon'ble C. D. Field, LL.D.,
The Hon'ble Peary Mohun Mookerjee,
and
The Hon'ble F. Prestage.

NEW MEMBER.

The Hon'ble Mr. Prestage took his seat in Council.

COMPULSORY VACCINATION.

The Hon'ble Kristodas Pal said last week he explained to the Council the reasons and objects of the Bill to make vaccination compulsory. He proposed now to give a brief outline of its main provisions. The Bill had been drafted chiefly on the lines of the Bombay Vaccination Act, with such alterations and modifications as the circumstances of this province had called for. The preliminary chapter of the Bill contained certain definitions to which he need not refer at any length. The sections providing for vaccination first of all prescribed that children should within one year after their birth be vaccinated; secondly, that unprotected children under fourteen, who were brought to reside in the city temporarily or permanently, should be vaccinated; thirdly, that the parents or guardians of unprotected children living within the city, or in any portion of the suburbs to which the Bill might extend, should within six months of the passing of the Act cause them to be vaccinated. Then the Bill provided for the vaccination of unprotected adults; and lastly, for the vaccination of seamen arriving in the Port of Calcutta. The vaccination of adults was a new feature in this Bill; that provision did not obtain in the Bombay Act, but it had been found from experience that small-pox was often brought into the city by unprotected persons, and it was therefore of the utmost importance that measures should be taken for the vaccination of adults. The vaccination of seamen was left to the Health Officer of the Port of Calcutta. The Bill did not lay down any hard-and-fast rules about the character of the lymph to be used for vaccination. The subject of the kind of lymph which ought to be used, as the Council was well aware, was a matter

of much controversy amongst scientific men both in Europe and America; experiments were going on in several European countries with calf lymph, and in the Bombay Act the use of animal lymph had been made obligatory. But the preponderance of medical opinion here seemed to be that it would be best to leave the matter open at present, and to let the Government which would supply the lymph supply that kind of lymph which might be in accord with the scientific opinion of the day. He should mention that in Bengal, and throughout Upper India he believed, arm-to-arm vaccination was generally practised, and human lymph was used. If, however, experience or mature scientific opinion should tend to the other direction, he dared say the Government would take necessary steps to provide a supply of that kind of lymph which would be most acceptable to the public. The ancient books of Hindoo medicine, he might say, were more in favour of calf than human lymph.

Under the Bombay Act the vaccinators were allowed to levy a fee for vaccination, and to apply it to their own use. The Bombay Act laid down no limit to the amount of fee to be levied. The Bill before the Council prescribed a maximum limit of eight annas, which he hoped would be considered moderate enough. It would be carried to the credit of the Municipality of Calcutta, which would be charged with the cost of the vaccination establishment; and in the case of the Mofussil it would be credited and expended in such manner as the Government might direct. Practically the vaccinators now charged a fee; it was a voluntary offering, but it was nevertheless charged and paid by the people. Now it was proposed to remunerate the vaccinators liberally, and to carry the fees to the credit of the Vaccination Fund.

The procedure laid down for Calcutta was different from that which was provided for the Mofussil. In Calcutta the Health Officer of the town would be put in charge of the department, and would act under such rules and regulations as the Lieutenant-Governor might lay down. Calcutta would be divided into different sections and wards, and public vaccine stations would be established in each, or, where the wards were small, two of them might be conveniently doubled up and one vaccine station provided for them; and, on the other hand, two or three vaccine stations might be established in the larger wards. Persons resorting to the vaccine stations would not be charged any fee whatever, but those who might call in the vaccinators to their own houses would be required to pay the fee. With regard to females who, according to the custom of the country, did not appear in public, the Lieutenant-Governor would make rules for their gratuitous vaccination.

The Bombay Act provided criminal imprisonment for neglect to vaccinate, but in this Bill the penalty of a fine was proposed, and no imprisonment was provided for neglect to vaccinate. A fine of Rs. 100, with a daily fine of Rs. 20 for every day during which the offence was continued, would, Baboo Kristodas Pal thought, act as a sufficient deterrent against neglect. Prosecutions under the Act would be by summons. This was an important point, and he believed the provision would be acceptable to the general public.

Lastly, the Bill gave power to the Lieutenant-Governor to make rules to provide for the appointment of deputies of public vaccinators when necessary;

The Hon'ble Kristodas Pal.

to determine the qualifications to be required of public vaccinators or their deputies; to regulate the gratuitous vaccination of females who, by the custom of the country, were unable to attend the public vaccine stations, and were too poor to pay; to provide for the supply of lymph; to regulate the books and forms to be kept by public vaccinators and registrars; and for the guidance of public vaccinators and others in all matters connected with the working of the Act.

He was informed that a suggestion had come from the Government of India to the effect that, when the Bill was extended to first and second class municipalities, opportunity should be given to the inhabitants of those places to express their opinion before the Act was introduced. That was the procedure now followed in the Panjab with regard to the introduction of the municipal law; this suggestion would be duly taken into consideration by the Select Committee to whom the Bill would be referred. He now moved that the Bill be read in Council.

The Hon'ble Peary Mohun Mookerjee said there was a provision in the Bill for extending its operation to the suburbs of Calcutta, thus making provision for intercepting the disease from without. But the Bill took no cognizance of the poor and houseless boys in the city itself. The number of poor boys who had no parents or guardians in the sense defined in the Bill might be counted by scores, if not by hundreds, and there was no one who, according to the provisions of the Bill, would be responsible for their vaccination, nor would they be reached by the power conferred on the Superintendent of Vaccination by section 11, enabling him to require unprotected persons to submit to be vaccinated. These poor boys therefore might catch the disease and form centres of contagion. But there was another consideration connected with this question which should not be lost sight of. Supposing that ways and means were found for giving protection to these poor boys, it was a question as to who would feed and take care of them during the stage of feverishness which very often supervened vaccination. A number of these boys would be unable to move or go about to earn their living, and it was but just to them that they should not be allowed to suffer by reason of a compulsory operation which was extended to them, not only for their own benefit, but for the protection of the community at large. He would beg therefore to suggest that provision should be made in the Bill for the establishment of pauper vaccine hospitals in the city. The money that would be required for such institutions was no doubt an important consideration, but he submitted that it would not be improper to expend the money derived from the fees to be levied under the Act for the benefit of these poor boys, who might take it into their heads to prove their brotherhood to the good citizens of Calcutta in the same terrible way in which the Irish widow mentioned by Carlisle proved her sisterhood to the people of Edinburgh.

He was glad that the one other point with reference to this Bill, to which he intended briefly to allude, had already received the attention of the Government of India; he meant that provision of the Bill which related to extending the operation of the law to Mofussil municipalities and villages. In Calcutta,

hon'ble members had been told, on the authority of Dr. Charles, that ninety-five per cent. of the population had accepted vaccination as the best means of affording protection against small-pox; but in the Mofussil opinion was not so strong in favour of vaccination, and that was not a matter for wonder, when it was recollected that great diversity of opinion prevailed on the subject even in England itself. He therefore thought it advisable that the introduction of the law should be confined to those municipalities and towns, at least half the population of which should apply for its introduction.

The HON'BLE MR. MACKENZIE said there was only one point in which he wished to supplement the very careful statement which had been made by the hon'ble mover of the Bill, and that was in reference to the change which the Bill proposed to make in the re-arrangement and working of vaccine operations in Calcutta. The Council knew that those operations had for many years been supervised by Dr. Charles under the title of Superintendent-General of Vaccination. How ably he had done this work was well known; that Calcutta was now in a fairly satisfactory state as regards protection from small-pox was due entirely to the exertions and the care with which Dr. Charles had managed the business in his hands. The measure now before Council was merely the natural outcome of all Dr. Charles's labours. But it was agreed, when this compulsory system was proposed, that it would require for its management and careful supervision more time than an officer like Dr. Charles, with all his numerous duties, could possibly give to it, and it was felt that the Sanitary Officer of the town was the proper person to undertake the work with the agency at his disposal. It would not be supposed, MR. MACKENZIE was sure, that any slight was intended to be put on Dr. Charles by the proposed transfer; he himself concurred in the change, and was of opinion that, as vaccination was to be made compulsory, the work should be done in a more systematic way; and the Government was therefore relieving him of a duty which it would not be easy for him any longer to perform.

HIS HONOR THE PRESIDENT said, with reference to the observations which had been made regarding the treatment and cure after vaccination of vagrant boys, if sufficient provision was not made by section 11 of the Bill, some alteration might be made to meet the case. But, as he understood it, the matter was sufficiently provided for by that section, and if hospital treatment was needed, it could be afforded by the Campbell Hospital, which was just as much open to cases of fever from vaccination as from any other cause. It was quite open to the Select Committee to make any suggestion it thought fit.

HIS HONOR desired to express his entire concurrence in the remarks which had been made by the hon'ble member on the right (Mr. Mackenzie) with respect to Dr. Charles. He was sure it was not the wish of any body who had watched the extraordinary progress and success of vaccination in the city to do anything that might cast any reflection or slur on Dr. Charles's administration of vaccine operations; the fact was that it was through him, and his great attention to the matter, that the business of the department had become so large that the Government was compelled to make special provision for the conduct of the work, and HIS HONOR was sure that Dr. Charles ought to be extremely proud of

the work he had done, and that nothing would gratify him more than the passing of this Bill—a measure which he himself suggested should be passed some fourteen years ago. On that occasion His Honor opposed the proposal, as vaccination had not then made sufficient progress to warrant the adoption of a compulsory measure. But since that time the question had assumed a different complexion, and whatever objections His Honor had then to the proposal, they had now disappeared, and it was chiefly through Dr. Charles' exertions that the change of circumstances which rendered a compulsory measure justifiable now had been brought about.

RECOVERY OF PUBLIC DEMANDS.

The Hon'ble Mr. Field moved that the Bill to amend the law for the recovery of certain public demands be read in Council. He said:—"When I asked leave on Saturday last to introduce this Bill, I pointed out what the object of the measure was. I said briefly that it was a measure to repeal such portions of Act VII of 1868 of the Bengal Council as are concerned with the recovery of public demands, and to re-enact them in a complete and amended form. I also stated what the nature of the procedure was which that Act laid down for the recovery of such demands, namely that a public officer makes a Certificate that a certain amount is due, and on that Certificate as a decree proceedings are taken to realize the amount so declared to be due. Opportunity is given to the person against whom the Certificate has been made to come in and make any objection he has to the amount being realized, and in certain classes of cases it is competent to that person further to contest the whole proceedings on the merits in the Civil Court.

I propose now to draw attention to the particular points in which this Bill proposes to amend the former procedure. First as to section 1, the procedure is expressly extended to the town of Calcutta. Under the existing law there was a doubt upon this point, and it has been considered desirable to remove that doubt. The purpose for which this procedure is particularly required in Calcutta is to realize the land revenue due on plots of land within the city. There is at present an Act of the Supreme Legislature, XXIII of 1850, which provides a certain mode of realizing that land revenue, namely by distress and sale. This Bill does not propose to interfere with that procedure, and has been so drafted as to leave it to the Revenue Authorities to adopt either procedure which they may think advisable.

The next point to which I invite attention is in section 3. It is there provided that every Certificate made under the provisions of the former Act, which will be repealed if this Bill become law, may be enforced under the provisions of this Act.

In section 4 a change is proposed to be made which has been found very desirable. Under the existing law the Collector of the district is alone competent to make a Certificate. It is possibly known to all the members of this Council that within the last few years the administration of districts has been sub-divided, and that the formation of sub-divisions has been effected to a very large extent, the officers in charge of such sub-divisions being vested with

powers very nearly the same as those of a Collector. It is therefore proposed that all officers in charge of sub-divisions shall exercise the same powers under the new Act which the Collector has under the existing Act. In section 5 are enumerated the cases in respect of which a Certificate Absolute may be made; they are *first*, the cases in which an estate has been sold for arrears of its own revenue, and the proceeds of such sale are insufficient to liquidate the arrears of revenue due; and *secondly*, when arrears are due from a farmer. In both these cases the Collector is empowered to make a Certificate, and that Certificate it will not be competent under the law for the person against whom it is made to dispute upon the merits in a Civil Court. This merely follows what has been the practice in this country for very nearly a century.

I now come to section 6, which attempts to enumerate all the cases in the existing law to which it is desirable to extend the Certificate Procedure. The first clause of this section includes any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land revenue, or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue. This language may at first sight appear somewhat complicated; but the fact is that it has been so worded in order to take in a large number of cases covered by the old Regulations in which the language used is not uniform, and I have so drafted the clause in order to make it applicable to all those old Regulations in which language essentially the same, but differing in its form of expression, has been used. Clause 2 applies to any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him. Here there is no change. Then clause 3 takes in a number of Acts of the Bengal Council under which certain demands, moneys, dues, fees, duties, and so forth may become due to Government; and which demands, fees, duties, and so forth it is thought desirable to realize under this procedure. Many of these are so realizable under the existing Acts, and this Bill only collects them and adds one or two more which were formerly overlooked. Clause 4 of section 6 in the same way provides for the realization of tolls due from farmers under the Canals Act, 1864, or from the sureties of such farmers. Clause 5 applies to arrears of rent due from a person having charge of a ferry under Regulation VI of 1819. Clause 6 relates to any arrears of revenue or rent payable to Government from any ryot, or from any person holding any interest in land, pasturage, forest rights, fisheries, and the like: this is not a new section, it is an addition to the Act of 1868 made by the amending Act of 1875. These cases are cases of rent due to Government. It has been thought—and that is an opinion in which I entirely concur—that that which would be rent if paid to the zemindar is, when payable to Government, not rent, but revenue, and this clause merely makes this particular revenue realizable under a procedure which has been in substance usual for very many years in these provinces. I then come to clause 7, which proposes to extend the special procedure to the recovery of rents in estates which, under any law for the time being, are under the management of the Court of Wards. This is a new provision, and I am prepared to admit

that it is a provision which carries the principle of the Bill to its extremest limits. I have no doubt that it will be carefully considered in Select Committee, and if it be thought desirable that this procedure should be made applicable to the recovery of rent in these particular estates, clause 7 will hold its place in the Bill.

The next point to which I shall refer is rule 2 of section 6. It has there been made more clear than it is in the existing law that any person against whom a Certificate for certain demands has been made may contest that Certificate on the merits in a Civil Court. I may note by the way that I have introduced a new nomenclature, calling a Certificate which may not be disputed in the Civil Court a *Certificate Absolute*, and one which may be disputed on the merits a *Certificate Conditional*. In the existing law there is no provision made as to any length of time within which a *Certificate Conditional* shall become absolute. I have introduced a limitation of one year, and the section provides that if the party against whom a Certificate Conditional is made, fails to contest it in the Civil Court for the period of one year, it shall then become a Certificate Absolute, or, in other words, that it cannot be contested or disputed after the lapse of one year.

The next point to which I invite attention is section 7. Under the present law certain classes of public officers to whom money is payable are allowed to notify that fact to the Collector, and the Collector on receipt of such notification proceeds to make a Certificate. It is now proposed to extend this procedure to Managers appointed by the Court of Wards; in other words, it is proposed to allow Managers to notify to the Collector of the district that such and such a sum is due as rent from persons holding land in estates under the management of the Court of Wards, and thereupon the Collector is empowered to issue a Certificate for the realization of the rent as a public demand. The section as drafted makes no provision for the levy of stamp duty on Certificates for the recovery of rent due to Wards' estates; but in Select Committee, if the section is allowed to stand, it will become necessary to protect the public revenue against loss by providing that such notices from Managers to the Collector shall bear such stamps as would be imposed on plaints filed in the Civil Court for the recovery of the same amount.

I now pass to section 9. Under the Act of 1868, as soon as a Certificate is made, and notice of its having been made served on the person against whom it is made, it may be enforced against the immovable property belonging to such person; there was no similar provision as to movable property, and it has occurred in the course of the experience of the last ten or twelve years that the public revenue has suffered in consequence of a person who had no immovable property having received notice of a Certificate having been made, and then made use of the month allowed for objecting to make away with the movable property, which otherwise would have been sufficient to satisfy the Government demand. The section therefore proposes to give to the Collector power similar to what every Civil Court possesses, namely a power analogous to that of attachment before judgment. This power is to be exercised by the Collector, not in all cases generally, but only when he is satisfied that the person

concerned is likely to conceal or remove or dispose of the whole or a great part of his movable property.

I next invite attention to section 11. That section proposes to allow the Collector to make over to any Deputy Collector subordinate to him a case in which objection has been raised, and which therefore necessitates the taking of evidence and a judicial adjudication. It has occurred in several districts, notably in one district, that the amount of work arising out of the existing Act was so large that the Collector himself could not get through it without detriment to the efficient performance of his other duties. These cases are commonly simple, and every adjudication of a Deputy Collector will be appealable to the Collector. As a further safeguard, the Commissioner is empowered by rule 3 of the same section, in any case in which he thinks fit, to consider and revise any order passed either by a Collector or Deputy Collector. Under the present Act, in the case of farmers, and in the case of demands which are payable to the Collector himself, who makes the Certificate, it is necessary to give notice to the individual concerned, and no Certificate can be made until the expiry of one month after the giving of notice. The present Bill proposes to dispense with this preliminary notice and so get rid of the month's delay which results therefrom; it provides that, as soon as the Certificate is made, a full month shall be allowed to raise objections before proceedings are taken for enforcing the Certificate. This is a point as to which there is some doubt under the existing Act. In some districts Collectors consider themselves at liberty, having made the Certificate, to proceed at once to the realization of the amount stated therein. In other districts it is held that no steps can be taken by way of execution until the month has expired. In the Bill it is made clear that a full month is to be allowed for objecting before the Collector can take proceedings. Thus no real injury can be done to the parties concerned even in those very exceptional cases in which the Collector has made the Certificate under a mistake.

In section 12 provision has been made for applying the sections of the Code of Civil Procedure relating to insolvent judgment-debtors to persons who have become debtors under this Act. A case occurred in the Chittagong district which was brought before the High Court, and it was decided that under the existing law these sections of the Code of Civil Procedure do not apply. It has been thought desirable that the debtors of Government should in this respect enjoy the same facility which has been conceded to the debtors of private persons.

In section 14 provision has been made for receiving payment of a demand, in respect of which a Certificate has been made, by instalments. No such provision exists in the present Act, and I am informed that the omission of such a provision has unduly tied the hands of the Collector in the case of persons who are ready to pay, but in consequence of circumstances over which they have no control are unable to pay the whole amount at once.

The last provision is that contained in section 15 of the Bill. It is there proposed to protect the Collector and every public officer concerned from any civil suit for any act done, or required to be done, by him in the discharge of

his duty under the Act. This merely extends to Collectors and other officers acting under the Bill the protection given to judicial officers by Act XVIII of 1850, the provisions of which Act are well known to the Council. The Collector and other public officers acting under this Bill will really be discharging judicial functions; and it is reasonable to afford them the same protection which the existing law gives to all judicial officers. I may mention in connection with this section that no protection is proposed to be given to the Managers of Wards' estates, and that if the present form of the Bill be retained so as to enable the Collector to make a Certificate on the requisition of such Managers, they will in no way be protected from the consequences of any neglect or incaution on their part to the disadvantage of the person injuriously affected thereby."

The Hon'ble Kristodas Pal said he congratulated the hon'ble member on the clearness of the arrangement of the Bill, and added that he generally concurred in its provisions. But there was one provision in it to which he took exception, and which the hon'ble mover had himself approached in hesitating terms. He referred to clause 7 of section 6. That clause was not a matter of detail, but involved a very important question of principle; it was whether the recovery of rent in respect of estates or tenures in charge of the Court of Wards should be brought within the purview of the Certificate procedure prescribed in the Bill. The hon'ble mover in his Statement of Objects and Reasons has stated that the Certificate procedure was so summary that it ought to be used very carefully. He said—

"Commissioners and Collectors were then consulted in order to ascertain if in the course of practice other instances had arisen of public demands not falling within the purview of Act VII (B.C.) of 1868, but which might well be made recoverable under its provisions. Some officers were in favour of a very wide extension of this special procedure, and would make it applicable to all sums, liquidated or unliquidated, payable to the officers of Government, whether acting on behalf of Government or on behalf of private individuals, whose property or estates have by law come under the management of those officers. Having carefully considered the matter, I have come to the conclusion that any such unlimited extension of what is in fact a summary procedure would not be safe or advisable. In this view I am confirmed by what the Legal Remembrancer has communicated to me about the working of the present Act."

Still, Baboo Kristodas Pal submitted with due deference, inconsistently enough the hon'ble mover had included the recovery of the rents of estates under the Court of Wards in this measure. Arrears of rent did not come under the category of State demands which would justify an exceptional procedure. The Collector being in charge of Wards' estates was, so to speak, interested in the management of such estates; but under the procedure laid down in the Bill, he would be the judge in cases connected with those estates. That, Baboo Kristodas Pal submitted, was opposed to right principle. Rent suits sometimes involved questions of right and other complicated matters which were best left to be dealt with by the civil courts.

It was observable that the certificate of the Collector under this Bill in respect of this class of cases would not be absolute, but, as the hon'ble mover called it, "conditional," and that liberty was given to the aggrieved party to apply to the civil court for redress within a year of the making of the

certificate. If, then, it was considered necessary that the ultimate remedy should be sought for in the civil court, he did not see the necessity of providing for that class of cases the summary procedure of a certificate; it would only lead to additional expense, trouble, and harassment, and he considered it much better that the procedure should be simplified, and suits for the recovery of rent dealt with by the civil court at once, than that the certificate procedure should be first gone through as provided in this Bill, and the same thing should be gone over again in a regular way before the civil court. As the subject of the simplification of the procedure for the recovery of arrears of rent was now before a Commission, and as he believed a Bill would be soon submitted by that Commission, he thought it would be well to leave the question of the realization of arrears of rent in estates in the hands of the Court of Wards to the general law. He would therefore strongly oppose the introduction of this provision in the Bill.

The HON'BLE MR. DAMPIER said there were two points which it was right he should notice, because this Bill originated from the Board of Revenue, and had been prepared in consultation with him, and he was partly answerable for it. The first point was in connection with what had fallen from the hon'ble mover regarding the town of Calcutta; on further consideration MR. DAMPIER thought they should do better perhaps to leave Calcutta out of the operation of the Bill. Under the Certificate Act the High Court held that the Certificate procedure ousted all other procedures which were prescribed by special Acts; if the Certificate procedure was adopted, no other procedure could be used, it was in supersession of all others which the Collector had. It was not quite clear whether the existing Act applied to Calcutta or not. Upon that decision of the High Court a reference was made to the Board as to whether the decision prevented the use of the Certificate procedure in Calcutta; and in order to make the matter quite clear, a provision relating to Calcutta was introduced in this Bill. But MR. DAMPIER thought it would be sufficient if it were made clear that this Bill did not apply to Calcutta, but he would make further enquiries on the subject.

He would now approach the other question, and he was not surprised to hear the hon'ble mover of the Bill, who had so recently taken his seat in this Council, speak of it as if it was a new question, and had never received the attention of the Council. But hon'ble members who had been in Council for some years, and were acquainted with the history of its proceedings, would remember that this point was not now approached for the first time. It was a *vexata quæstio* whether rent in Wards' estates should or should not be recoverable by the summary procedure which was provided for the recovery of public demands. He was not going now to speak on the principle, but he would remind the Council of the history of this question. Going back to Regulation VII of 1799, the procedure for the recovery of rents in Wards' estates was the summary procedure prescribed for the recovery of rents in Government estates, and it was so even in estates under the management of surburakars. Again, in Bengal Act IV of 1870, section 75, which was passed after full discussion, provided that farmers and others holding

tenures in estates in charge of the Court direct from the Collector should be subject to the same Rules, Regulations, and Acts as were applicable to other persons holding similar tenures and interests under Collectors of land revenue; but when the farm was held from the manager, those Rules, Regulations, and Acts should not apply. It was therefore clear that, where the management of Wards' estates was directly under the Collector, this procedure might be used, but not where there was a manager. But then came the construction put by the High Court upon the meaning of the words "holding direct from the Collector." The Court interpreted these words to apply only to those farmers and others whose tenures and holdings had been created since the Collector came into the management of the estate. That, however, was certainly not the intention of the Council, however imperfectly their intention might have been expressed in the law. Their intention was to draw the distinction between tenants on estates managed by the Collector without the intervention of a manager, and those to which a manager under the Act was appointed. When the Court of Wards Act of last year came up in Council, the subject was discussed and considered. Section 63 of Act IX of 1879 provided that "all arrears of rent due by farmers, undertenants, and ryots in respect of property under the charge of the Court (whether such rents have become due before or after the Court has taken charge) shall be recoverable as arrears of revenue, and shall constitute a demand under Bengal Act VII of 1868, or any similar Act for the time being in force;" and that that provision was not passed without consideration would be observed from the next clause of the section, which enacted that "the last preceding clause shall not apply to arrears of rent enhanced after issue of notice under section 13 of Act X of 1859, or under section 14 of Bengal Act VIII of 1869, but of which the enhancement has not been agreed to by the person who is liable to pay the same, or has not been confirmed by a competent court." After passing that section of the Wards' Act, it was thought that the matter was set at rest, but unfortunately under the Certificate procedure the certificate must be for money due to the Collector or other officer; if the money was due to any other officer than the Collector, that officer had to make a demand on the Collector, and the Collector had thereupon to issue a certificate, and some one raised the question whether the manager of a ward's estate was any "other officer" within the meaning of the law; it was said that "other officer" meant other officer of the same class as the Collector. The money was not due to the Collector, because it was the ward's money: therefore he could not make a certificate that the money was due to himself, and therefore he could only make it on the demand of some other officer; and no "other officer" existed who was legally competent to certify that the amount was due. Thus the section could not be worked at all. The matter was then referred for the opinion of the highest law officer of Government, and he advised that the manager of a ward's estate did come under the denomination of "other officer;" thus fortified, MR. DAMPIER felt himself justified in letting things take their course. Then in an evil moment he, as it was considered doubtful, had thought it desirable that the opportunity of the amendment of the Public Demands Act should be taken to remove all

ground of doubt and to make it quite clear that the manager was the "other officer," and thereupon the hon'ble mover of the Bill before the Council got up and announced that in this respect he was introducing a new provision altogether.

Loss of stamp revenue had been referred to. MR. DAMPIER might mention that in some Wards' estates the Government revenue was falling into arrears because the rents could not be collected, and this not only in small estates, but in large ones, and being estates in charge of the Court of Wards they could not be sold for arrears of revenue. So far therefore the withdrawal of any facility for collecting rents in Wards' estates would jeopardize the land revenue.

The HON'BLE THE ADVOCATE-GENERAL only wished to add a few words to what had already been said. He quite supported the hon'ble member who had just spoken that this provision did not for the first time state a proposition of law new to the revenue procedure of the country, but it was enacted with the view of giving the existing law precision; and if the principle was now discussed, and this clause of the Bill was removed, the Council would be altering a law which had existed for a great number of years. Although an estate managed by the Court of Wards was not a Government estate, still the Government was to a certain extent directly interested in the collection of the rents of that estate. When an estate came under the charge of the Court of Wards it could not be sold for arrears of revenue, and it behoved the officer in charge to get in the rent (as speedily as possible) in order to pay the Government revenue, and in that way the collection of rents in Wards' estates became a matter as important to the Government as its own revenue.

The HON'BLE MR. O'KINEALY said he agreed with the learned Advocate-General and the hon'ble member on his left (MR. DAMPIER), that since the beginning of the British rule in India realizations of rent in Wards' estates were subject to exactly the same procedure as that in Government estates, and the reason was that the Government having taken charge of the estates and looked after them, considered itself justified in recovering amounts due to the estate by the same process as in Government estates. Up to the passing of Act IV of 1870 that was the law, but in that Act there was a distinction made between lands held under the Collector and lands held under a manager appointed by the Court of Wards, and that procedure had been followed up to the present day. He was not inclined to extend the procedure of the present Bill to managers; he did not think as a rule that the managers of the Court of Wards were much better than the ordinary agents connected with zemindars' estates; and he felt that to allow a manager to say that such and such an amount was due to him without requiring any further guarantee of the correctness of his statement, was really going too far. He would be very much inclined to allow the procedure proposed in the Bill to stand if the statement of the manager was made upon oath, so that he could be prosecuted if he made a statement which he did not know to be true; but as the provision now stood, MR. O'KINEALY did not think the Council would be justified in sanctioning its enactment.

The HON'BLE MR. FIELD said that the point to which he intended to invite attention as being new was this, the allowing the Collector, on the requisition of a Manager under the Court of Wards, to make a Certificate. He was well aware that under all the Court of Wards' Regulations and Acts up to the present date, rent payable *directly to the Collector* was recoverable under the special procedure—a procedure analogous to it; but he believed that until a very short time back the question whether rent payable, not directly to the Collector, but to Managers under the Court of Wards, was recoverable under this procedure had never directly been raised or discussed. The question, it might be urged, was not new in principle; he contended as a matter of fact that it was new in practice—new in the instance. The Act of 1875, which amended the Act of 1868, ran thus:—"Any arrears of rent payable to a Collector in charge of an estate or tenure on behalf of a private person, &c." The Court of Wards Act passed last year omitted the words "to a Collector," but it made arrears of rent due by farmers, undertenants and ryots in respect of property under the charge of the Court recoverable as arrears of revenue. A doubt then arose whether rent, if recoverable as arrears of revenue, and if payable, not to the Collector, but to a Manager, came within the definition of the word "demand." That led to the consideration whether "any officer other than a Collector" in section 19 of the Act of 1868 could be interpreted to include a Manager under the Court of Wards. There was one opinion that it meant any officer *ejusdem generis*, of the same class, that is to say, any *public* officer. The other view was that "any officer" might be interpreted to include a Manager. He did not think it necessary to intimate what his view was: but until that question arose, the question, whether the Collector could on the requisition of a Manager under the Court of Wards issue a Certificate, was a question certainly new to the outside public, and new in practice under the Act of 1868.

HIS HONOR THE PRESIDENT, before putting the question that the Bill be read in Council, would say, as regards the question of principle that had been raised, that he must admit it seemed to have a great deal of force and reason in it, and it was a subject which the Select Committee should carefully consider. It was not a matter which the Council could raise and dispose of off-hand. He understood it was not the intention of the hon'ble member who raised this question to move a specific amendment, but to request that the Select Committee should consider it. It might be quite true, as the hon'ble member on the right (MR. DAMPIER) said, that the history of this principle, although it had been rather confused at times, had been generally to affirm that there should be a special procedure for the recovery of demands in estates under the management of Government officers, even though they were not the property of Government. HIS HONOR did not think it necessary to go back to the practice of 1799, because the summary procedure which existed then was not the present Certificate procedure, and bore no sort of resemblance to it. Then in the Act of 1870 a clear distinction was drawn in section 4 as to estates managed *khas* and those managed through a manager or agent, and he thought the necessity for making that distinction showed how unsound was the

principle of bringing Wards' estates under the procedure of that Act; the section provided that under direct management of the Collector the special procedure might be accepted, but not where Wards' estates were under the charge of managers, showing the doubts that existed in the minds of the framers of that measure. Therefore it could not be said that the principle of the provision in the present Bill was absolutely affirmed in 1870. It would no doubt be said that if the special procedure was absolutely necessary to ensure the recovery of a sufficient amount of rent to meet the Government demand, the same security was necessary for all estates in the country. It should be remembered that special powers were given to Government, because it was not holding as a private individual, but as a trustee for the public. Government had no individual interests in the collection of its dues and was not likely to be influenced by selfish or unjust motives, but that was not the case where the interests of a private estate were concerned. Where estates were managed by the Court of Wards it was not the interests of the public which were being guarded and protected, but the interests of a private individual; the loss or profit did not affect the public revenues, but the revenues of a private estate, and therefore the question of Wards' estates differed altogether from Government estates. Then, further, the wholesale adoption in such cases of this procedure would be a serious injury to the public revenue, because, if the special procedure were applied to the recovery of rent in all Wards' estates, the loss of revenue under the Stamp Act would be very large indeed. On the whole, he thought it desirable that the Select Committee should consider very carefully the whole principle whether the grounds which made it necessary to have a summary procedure for the recovery of Government demands applied to the management of Wards' estates. He should be very glad, in consequence of what had passed, if the Committee would give to the subject their serious consideration when the Bill was laid before them.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble the Advocate-General, the Hon'ble Mr. Dampier, the Hon'ble Mr. O'Kinealy, the Hon'ble Syud Ameer Hossain, the Hon'ble Kristodas Pal, the Hon'ble Peary Mohun Mookerjee, and the mover, with instructions to report in a fortnight.

ROAD AND PROVINCIAL PUBLIC WORKS CESSES.

The Hon'ble Mr. Dampier in presenting the report of the Select Committee on the Bill to amend and consolidate the law relating to local rating for the construction charges and maintenance of roads and other means of communication and of provincial public works, said that the rules of the Council required that before the report of the Select Committee on any Bill could be taken into consideration, it should be in the hands of members for seven days. He was not in a position therefore to ask the Council to consider the report of the Committee and the amended Bill, as they had only been in the hands of members two days. But he would now make his exposition of what the Select Committee had done, so that the Council might be able at the next meeting to enter into a discussion upon the detailed provisions of the Bill.

His Honor the President.

The Bill was prepared by the Board of Revenue and published by the Government in November last, and the result had been that it had been most carefully considered, not only on that occasion, but in its later stages by Commissioners of Divisions and Collectors, and also many Deputy Collectors who had experience in the working of the existing Acts, and who had made many valuable suggestions. The Select Committee had taken equal pains in the matter and had re-cast the Bill altogether. From a remark he had just made, his Hon'ble friend on his left, the Advocate-General, seemed to take alarm at the length of the Bill; perhaps he was afraid that it was "*monstrum horrendum informe ingens cui lumen ademptum.*" If so, MR. DAMPIER hoped that a closer examination of the Bill would not confirm this opinion, at any rate not in all its particulars. That the Bill was "a monster" and somewhat "alarming by its dimensions" he must admit, but he hoped that for this very reason the Committee had succeeded in saving it from the other two characteristics of the Cyclops, that it is not "a shapeless mass" but a symmetrical whole, not "obscure and without light" but perspicuous and easily intelligible.

The table of contents attached to the Bill showed the arrangement of it into parts, chapters, and sections. The report of the Select Committee drew attention very briefly to the numerous changes that had been made in the Bill since it was read in Council. MR. DAMPIER would now only notice such of them as were substantial and material, passing over the mere formal changes.

To the definition of "cultivating ryot" in section 4, the Committee had merely added an explanation that when rent was payable in kind its money value should be ascertained by taking the annual value of the landlord's share of the crop calculated on an average of three years next preceding: that was really the only material change made among the definitions in the Bill; the other changes were verbal.

In Part I, relating to the imposition and application of the cesses, the section now standing as 8 provided that no railway or tramway, of which the dividend was guaranteed by the Secretary of State or the Governor-General in Council, should be liable to road cess or public works cess without the previous consent of Government. To that the Select Committee had added any railway or tramway guaranteed by the Lieutenant-Governor, in order to meet present circumstances, such as those of the Darjeeling tramway.

Then in section 7 the Committee had merely affirmed an admitted principle. The law as it stood did not require, nor was the Council in a position to legislate, that the Government should pay road cess out of other public revenues derived from estates which were public property. The Government had indeed hitherto consented to a special arrangement under which the amount of road cess which would have been payable on account of Government estates, if they had been private property, is paid over to the District Road Committees immediately it falls due, and in anticipation of the realization of the cess from the tenants; thus the inevitable loss which results from some of the amount due from the tenants being irrecoverable, does not fall on the District Committee; but neither is it a direct charge on the Government revenues. The whole arrangement is intricate and technical; but whatever

is done by the Government is voluntary and in the interests of the local Committees; no liability can be imposed on the Government in this respect by law. Section 7 accordingly provided that the Lieutenant-Governor should not be required by law to pay from the public revenues any sum as road cess in excess of such sums as might have been paid as such cess to the Collector of the district by persons liable to pay the same: the Government had only to hand over to the Road Cess Committee what the Collector might collect.

In section 10 a somewhat material alteration was made. According to the Provincial Public Works Cess Act, II of 1877, the publication of the accounts of the public works cess proceeds was required to be made annually in the *Calcutta Gazette*. Now, as a matter of practice, MR. DAMPIER was informed that no such accounts had been published; and not only so, but it was quite impossible from the way in which the proceeds of the public works cess were mixed up with other sources of revenue, to keep such distinct accounts, and therefore the Select Committee had omitted one requirement of the old law that such accounts should be published.

Part II of the Bill referred to the mode of assessment. Sections 13 and 15 referred to re-valuations. Under the existing law a re-valuation remained in force for five years, and longer until a new valuation was ordered. There was nothing more specific in the law. The Select Committee had in sections 13 and 15 provided that the Lieutenant-Governor might order a re-valuation either of a whole district or part of a district or of selected estates only in a district. Then section 13A would be acceptable to landholders; under it even though the Lieutenant-Governor might not think it necessary to order a re-valuation of a district, any one who wished to have his estate re-valued might come in after the expiration of five years and claim a re-valuation: those whose estates were deteriorated for any reason would have a right to ask for a re-valuation.

In another section, later on, the Select Committee had given a discretional power to the Collector, which the existing law did not give, of reducing the valuation during the currency of a five years' valuation. When any one applied for such re-valuation, if for instance half the estate had been washed away, or if the Collector saw any other good reason, he might reduce the valution. But section 13A left the Collector no option; he must re-value an estate after the expiry of the five years' valuation, if the holder of the estate applied for such valuation.

Under the existing Act when there was a valuation or re-valuation, the Collector issued a notice, and landholders were obliged to fill in the returns for valuation within three months. Many proposals were made on this point; some thought one month was sufficient for the filling in of returns, others would not shorten the period already allowed. The Committee had steered a middle course. There was force in the objection which was made that if three months were allowed after the notices were issued, the Collector's establishment had to sit still for those three months till the returns began to come in. The Committee had provided that if the lands in respect of which returns were

required were revenue-paying estates or rent-paying tenures, or the annual revenue or rent of which did not exceed Rs. 500, the returns should be made within six weeks of the service of notice; for all larger estates and tenures, the longer period of three months was continued. A similar distinction was made in the case of revenue-free estates and tenures. The returns of the smaller estates and tenures having been sent in within six weeks, the Collector's establishment would be occupied on them till the other returns came in.

Section 18 dealt with the question of fines. The Committee had not altered the system of daily fines, but they had adopted the provisions of the general law relating to revenue fines. The Collector might go on levying daily fines until the amount reached Rs. 500, but he could not realize anything more without the special permission of the Commissioner of Division.

In section 19 the Committee had made very material alterations, but they were merely in procedure. According to the old law if a landholder failed to lodge his returns within the time required, he became thereby disqualified from recovering rent on his estate. The Committee had provided as a means of enforcing that penalty, that the Collector should send notice to the Civil Court with a list of such defaulters, and that the Civil Court should take judicial notice of such list. In any rent suits which might be instituted before it, when a return was made by the defaulter, the Collector was required to send another notice, withdrawing the former prohibition. Also by the existing law the landholder was prohibited from recovering any higher rent than that which was entered in the return. It had been represented to the Committee that unintentional errors were frequently made in the returns, in which case this section acted with unnecessary harshness towards the landholders. The Committee had therefore provided that the person making the return might within six months from the submission of the return point out any omissions and inaccuracies, and have them corrected so as to enable him to collect his rents according to the corrected return.

Section 24 and the following sections related to summary valuations. Under the existing law the power of making summary valuations was not extended to revenue-free lands, however small the tenure or estate might be; the Select Committee in section 25 extended that power to revenue-free estates and rent-free tenures, and Mr. Dampier believed the power would be found very useful.

Section 26 took the place of clause 2 of section 8 of the existing Act. Not unnaturally that clause has been represented to be unintelligible as it stood, and it had taken a whole column of explanations and illustrations to explain what had been its meaning.

By section 30 the valuation of tea, coffee, and cinchona plantations was fixed at Rs. 10 per acre, but the Select Committee had thought proper to vest the Board of Revenue with the discretion of prescribing a lower rate of valuation if sufficient cause was shown.

Section 34 consisted of two clauses, one which he had mentioned providing for the reduction of the valuation during the currency of the five years' term; the other empowering the Collector to supply other omissions by assessing

tenures and lands which for any reason had been overlooked, or which were not in existence when the valuation was made.

In section 37 the Select Committee had made a change in the proviso at the end, which would much facilitate the working. Under the existing law it was necessary annually to issue notices to every assessee telling him what amount of cess he would have to pay during the coming year. The Committee had altered that, and had provided that it would not be necessary to issue such individual notices, except when a change was to be made in the annual amount payable. Assessees might be credited with the amount of intelligence required to enable them to understand that they would have to pay this year what they paid last year, unless they heard to the contrary.

In section 44 the Select Committee provided that when an estate was divided by butwarrah, or a separate account was opened under Act XI of 1859, the liability for the payment of cess should become separate, just as was the liability for the payment of revenue.

Section 42 provided the penalty for not paying road cess to the Collector on the date on which it becomes due; this was a subject of much controversy and much consideration. As the Bill was introduced a penalty of 25 per cent. was to be levied; the Select Committee had adopted simply the penalty of 12 per cent. interest.

Section 42A was also a new one in the direction of relief to the tax-payer. It had been very much pressed upon the Committee that the joint and separate liability imposed by the Act was very hard upon co-parceners of estates; men whose names were jointly registered as proprietors of estates, and who had no privity with one another, were held legally liable for the shares of the cess which in all equity their co-parceners should pay. Mr. Dampier had had the advantage of discussing this subject with Mr. Worsley, who was the apostle of separate accounts; he and those who agreed with him would like to have a separate account opened for every shareholder. Now, under Act XI of 1859, any proprietor whose share was not in dispute (and it must be observed that most disputes had been decided under the Land Registration Act) might ask for a separate account to be opened, which would in a great measure free him from the inconvenience of joint liability as to the payment both of the revenue and of the cesses If shareholders really felt their joint liability so much, why did they not ask to have separate accounts opened under Act XI of 1859? So much for joint-sharers in revenue-paying estates.

But the case of revenue-free estates was different—estates which were registered in what was called the Collector's B Register of revenue-free lands. In such cases the estate or unit borne on the Collector's Register was often the entire area lying in scattered plots in one or more districts which had been given as a revenue-free grant to the original grantee. In the course of years, however, there being no joint liability for land revenue to act as a bond of union, the original holding became dismembered. A few acres situate in one village were sold off to A, and a few acres in another part of the district to B, and so on; eventually the parties in possession of one purchased portion did not even know what other lands the tenure as originally created had comprised;

much less did they know who were the present owners of such other lands. In such cases joint liability for cess doubtless pressed hard, and there was a real grievance to be remedied as far as it could be done. There was no option given under the existing law to open separate accounts. At the same time, in the interests of the public, the right of enforcing such joint liability could not be given up *per saltum*. The Select Committee had therefore inserted a section (42A) which would enable the Government to proceed tentatively. It provided that in any district in which the Lieutenant-Governor might specially order the provisions of this section to be extended, separate accounts might be opened in respect of the amount of cesses payable by any holder of a revenue-free estate.

Section 54 also was entirely for the relief of the cess-payer. This same shareholder, who felt it was hard for him to pay for his co-parceners, if he paid more than his own share, could, as the law now stood, only recover the excess by instituting a contribution suit. This section provided a more summary process for recorded proprietors and shareholders; any recorded proprietor might come in and pay, say Rs. 100, of which, say, Rs. 20 only was on account of his own share as a recorded proprietor, and the other Rs. 80 was on account of cess due by his co-sharers. The section provided that on paying the amount he might say to the Collector—"You are in a position to know that this amount has been paid in by me, and I call upon you to make a certificate and recover that money by the certificate procedure." The Select Committee provided that in such a case a certificate should be made by the Collector, and the person applying should be deemed to be the decree-holder, and the co-parceners for whom he had paid should be the judgment-debtors, all the necessary processes being issued at his cost.

Now MR. DAMPIER came to the most intricate and difficult part of the matter—the sections relating to lakhiraj lands—which had received the attention and consideration of all the members of the Select Committee, and had been cast and re-cast, and might still have to be amended. The chapter on this subject was headed "Valuation and assessment of lands held rent-free, and payment and recovery of cess in respect thereof." In the remarks which he was now about to make, he would use the term "landholder" as the person bound to pay the cess to Government; and "lakhirajdar" as the person who was bound to pay cess to the landholder. The Select Committee had provided that the landholder was bound to include in his return all rent-free lands contained in his estate or tenure, and on his so doing the Collector was to give public notice by beat of drum in every village in which any of those lands were situated, and to such notice was to be annexed a copy of the valuation of the rent-free lands so made by the landholder. The object was to give the lakhirajdar the opportunity of objecting to his land being too highly valued. To meet the case of the copy of the valuation roll annexed to the notice being blown away or torn down, another copy was to be deposited at the police station, registration office, or other Government office in the neighbourhood; and the lakhirajdars were required to make themselves acquainted with the amount at which the landholder had valued their lands. Then, if any

objection was made within one month, the Collector would hear it, and either reduce the valuation or confirm it. So far as regards the valuation.

Then there was the assessment. How were lakhirajdars to be made aware of what they had to pay in each year? As soon as the rate of cess for any year was settled, the zemindar had to take the same steps for making the exact amount payable known to the lakhirajdars as the Collector had had to take in order to make the valuation known; he had to issue notice by beat of *tom-tom*, affix notices, &c., showing the amounts due. Then as to the payment. The lakhiraj-holder was of course liable to pay to the landholder at the full rate of cess upon his profits like any other owner of land, but the landholder had only to pay one-half of the amount to the Collector. That was the compensation allowed to the landholder for the trouble, expense, and loss which he might incur in recovering what he had paid.

Then, after all these notices had been given to the lakhirajdar, if he did not pay in the amount of cess to the landholder on the due date, the landholder could recover the amount with a penalty of twice the amount. It was considered desirable to give large remuneration as a *solatium* to them for being obliged, in the interests of the general public, to undertake the unpalatable duty of paying cess on account of these lands and recovering it from the holders.

Then followed some inevitably intricate sections. If the landholder had omitted to include any lakhiraj lands in his return, that is, if he should at the time of any future valuation by oversight or otherwise omit to include such lands, or if, as 99 out of 100 had hitherto done, he had omitted to include any such lands which he ought to have included in returns under the Act of 1871, the landholder might now come forward with a supplementary return to make up for that omission, and might pay up the cess due on such lands for the last three years, this being the period of limitation for recovery of the cess from the lakhirajdars. Then all the notices and processes already mentioned were to be issued and gone through for the purpose of making it certain as far as possible that the knowledge of his liability was really brought home to the lakhirajdar. Then, and not till after all these precautions had been taken, if the lakhirajdar failed to pay any future amount which might become payable, the landholder might recover from him a sum equal to five times the amount which the landholder had paid in respect of the lakhiraj lands. The Council would observe that five times the amount of cess at *half* rate which the landowners would have paid was precisely the same thing as the full amount of the cess normally payable by the lakhirajdar (*i.e.* the cess at full rates) with the penalty of twice that amount as imposed for default by section 47.

Such was the penalty imposed for failure to pay the cess in future, after all these precautionary measures had been taken to bring his liability home to the lakhirajdar. But it must be remembered that the lakhirajdar was actually liable to pay cess under the Act of 1871; he had only escaped owing to the difficulty of getting at him.

The Hon'ble Mr. Dampier.

Although therefore the Bill did not impose the heavy penalty in respect of arrears accruing due for a period antecedent to the issue of the new proclamations and notices, it enabled the landholder to recover cess paid for such antecedent period with interest at 12 per cent.

Section 50 again was very important. It touched one of those four cardinal points which MR. DAMPIER had mentioned on asking leave to introduce the Bill. The general complaint was that the landholder who had paid cess on account of lakhiraj lands could not recover it owing to the difficulty of identifying and getting hold of the actual lakhirajdar, for the purpose of suing him, and it was notorious that the difficulty was a real one. Section 50 was introduced with the object of remedying it.

When the landholder had paid in the amount of cess due from him, and after he had taken the precautions required by the Bill, so that the lakhirajdar must know perfectly well the amount which was due from him, the landholder was authorized to proceed either against the owner, the holder, or the occupier of the lakhiraj land; and when he had obtained a decree against any of these, he might execute it either against the owner, holder, or occupier whom he found upon the land, or by bringing the land itself to sale. Although the decree might have been obtained against the occupier, the land itself might be sold as if the decree had been against the owner. MR. DAMPIER believed that there would be no practical hardship under that procedure except perhaps in a few cases at first, until the lakhirajdars had realized that the difficulty of identifying them personally no longer afforded them protection in avoiding payment of what was due from them. The Committee had not been able to devise any other means which should give the zemindar even a fair chance of recovering the money which he had paid or which would prevent the lakhirajdar from escaping his liability.

Section 51 provided a kind of countercheck to this procedure. Every lakhirajdar was required to inform himself whether the landholder had entered his land in his return or not; and if the lakhiraj land was not so entered, the lakhirajdar was enjoined to come in to the Collector, make his own return, and pay his cess directly to the Collector, thereby avoiding all the danger of future severe penalties for non-payment and other vexation to which his connection with the landholder might render him liable. That would be a sort of spur to the landholder on one side not to omit these lands from his returns; and, if he did so, for the lakhirajdar to come forward to return himself, and thus get clear of his connection with the landholder. It was a great object to get the cess out of these lakhirajdars; they were so impalpable that nobody could identify them or point them out.

In section 62A an alteration was made in the mode of service of notices on owners, managers, or occupiers of tea lands, &c.

Chapter 5 was entirely new; it contained special provisions for Orissa and Midnapore. The remarks MR. DAMPIER had made in regard to lands which he had called lakhiraj referred only to rent-free lands in estates, not to lands recognized as revenue-free and entered as such in the register. The remarks he would now proceed to make related to revenue-free estates borne on the register as such.

It so happened that these recognized revenue-free estates in Orissa were extremely numerous and many of them very minute. The reason of this was that the province being temporarily settled, at the time of the re-settlements the Revenue Officers examined the case of each of these rent-free holdings, and such as were for any reason not practically liable to be assessed with revenue, were admitted as recognized revenue-free estates. The title to these estates being so secured, there was not, MR. DAMPIER thought, that normal antagonism between the zemindar and the holders of them as in the permanently-settled estates.

The Orissa Revenue Officers had represented that it was very troublesome to the owners of these petty revenue estates to go long distances in order to pay small amounts into the treasury, and that the zemindars would not be unwilling to accept the trouble of collecting the cess from them if sufficient remuneration were allowed. Finding the opinion of the Commissioner and Collectors to be so strong on this point, MR. DAMPIER had proposed these sections; he had provided that the valuation should be made by the Collector, but when the Collector had made the valuation he might annex these registered estates for the purposes of collection to any larger estates within which they were contained or to which they were adjacent. Then notice would be given to the holders of both estates concerned, and the amount of cess which was paid on account of these lands by the holders of the larger estates would be recoverable as rent from the lakhirajdars, and the holders of the larger estates were allowed the same concession of 50 per cent. for the trouble and risk of collection as in the case of rent-free lands. The Collector was only permitted so to annex any lakhiraj estate which was less than 500 beeghas in extent; he was not to annex a large lakhiraj estate to a small revenue-paying estate, merely to save the trouble of collection.

Chapter 6 was miscellaneous. The Collector made the valuations for the purposes of assessment, and he collected the cess for the District Road Committee. Under the existing law he had to get the permission of the Committee to entertain such establishment as he required: but the District Committee knew nothing whatever of the Collector's requirements for these purposes; the Bill therefore provided that the Collector should entertain such establishment as he considered necessary, and the cost of such establishment would be a first charge on the Committee.

Section 69 referred to the recovery of the cost of service of notices; the cost would be recovered either from the person to whom such notice or process was addressed, or from the person owing to whose default the notice or process was issued, as the Collector might think fit; but there was a proviso that no costs or other expenses should be recovered in respect of the publication of any proclamation or the issue of any notice calling for any return or giving intimation of any amount payable by any person as cess under the Act; all notices of valuation of the rate fixed and the amounts payable were to be served at the cost of the District Road Committee.

Section 71 contained one of the cardinal changes to be made in the law. Under the existing Act the Collector could proceed for the recovery of the

public works cess against movable property only. As this Bill was introduced in Council it provided that arrears of cess might be recovered like arrears of land revenue, that is, by simply lotting the estate on account of which the arrear was due and putting it up to sale. This proposal met with opposition as warm as the support which it received from many officers, and as a compromise the Select Committee accepted section 71 as it stood in the Bill, which provided that these cesses were to be recovered not by proceeding against personal property only, but as a public demand either against the personal property or against the land in respect of which the arrear was due.

Section 72 contained a repetition of the old provision of the law enabling the Collector to enter into possession and recover the amount due by attachment; but the Committee had made more specific provision on the subject by providing that notices should be issued prohibiting the ryots and tenants from paying rent to the person whose land had been attached.

Section 73 was a new section. It provided that the Lieutenant-Governor might invest any person with the powers of a Collector under the Act to be exercised under the control or supervision of the Collector, or independently of such control and supervision as the Lieutenant-Governor might direct. Then, by section 74, the Collector might, with the sanction of the Commissioner, delegate all or any of his powers and functions under the Act to be exercised, under the control and supervision of the Collector, by any Deputy Collector, Assistant Collector, or Sub-Deputy Collector, provided that every order passed by any such officer should be directly appealable to the Collector; everything was to be done on the Collector's responsibility.

In section 77 the Select Committee had gathered together the different points upon which an appeal could be preferred to the Commissioner, besides valuations and orders for the levy of fines which were provided for by preceding sections.

Section 78 was new and provided that all proceedings of the Collector or any officer of a lower grade under that part should be subject to the general control and supervision of the Commissioner and of the Board of Revenue, and that all proceedings of the Commissioner should be subject to the general control and supervision of the Board.

Section 79 related to certain points connected with the valuation and collections, regarding which the Board of Revenue might make rules; and so ended the first division of the Bill which contained the Revenue Officers' part of the business.

Taking up the next division of the Bill, section 80, the Select Committee had defined of what the road fund should consist; and in section 81, which was a very important section, the Committee had set out the purposes to which the District Road Fund was applicable; those purposes were arranged in the order in which each of them should be provided for. The first of these was payment of the cost of establishment and expenses incurred by the Collector, and the indemnification of the Collector for costs or damages incurred in the course of proceedings for the assessment and collection of the cesses; secondly, payment of establishments entertained and costs incurred by the

District Road Committee, and of leave allowances, gratuities, and pensions of their officers; thirdly, payment of sums which the Committee had undertaken to pay as interest on capital expended on works which directly tended to improve means of communication within the district, or between the district and adjacent districts, District Committees having expressed a wish sometimes to contribute towards the interest on capital expended for such purposes; fourthly, to the repairs and maintenance of roads, bridges, and other means for facilitating communication, which the Committee had taken charge of or towards which they had agreed to contribute. The effect of the fourth and fifth clauses came to this: before the District Committee could expend money on new works, they were bound to keep in efficient repair existing communications.

Clause 5 provided that whatever money was over after so providing for maintenance should be applied to the construction of new communications and of means and appliances for improving the supply of drinking water, and to the planting of trees by the roadsides, &c.; lastly, after doing all that, if the District Committee had any money left, it might be invested in local debenture loans issued by Government for the construction of productive public works which might directly improve the means of communication within the district, or between the district and the adjacent districts; and to these purposes to which the District Road Fund might be applied there were three precautionary provisoes appended. Chapter 2 of this part related to the District Committee's functions. The Select Committee had made an alteration by allowing members of Road Committees to hold office for five years. There were in future to be two kinds of meetings—ordinary and special. This followed the model of the Calcutta Municipal Act; the principal difference between the two kinds of meeting consisting in the number of members required to make a quorum. The Select Committee had also made the rules regarding the meetings of the Road Committees more precise than they were under the existing law.

Section 100 made an important change. An annexure to the Bill had been printed and circulated which showed the unfortunate result of leaving the power of appointing engineers in the hands of District Committees. MR. DAMPIER thought that any one who read that annexure would be satisfied that the power had not been wisely exercised. It had therefore been thought necessary after communication with Government to devise a new mode of appointment. It was now provided that the Road Committee should fix the salary of the engineer with the approval of Government; then on a vacancy occurring the Committee would inform the Lieutenant-Governor of the fact of there being a vacancy, and ask him to send in the names of competent persons. The Lieutenant-Governor would then send in three names, and the Committee would select the person whom they thought best.

There was reason to doubt whether some of the present District Engineers were qualified for the posts which they held. This was so great a public evil that the Select Committee had thought themselves justified in making the somewhat severe provision that all appointments of District

Engineers existing at the time of the commencement of the Act should hold good for a period not exceeding two years, the office being then deemed to be vacant; but if the Lieutenant-Governor and the Road Committee were both satisfied that no change was required, the engineer then in office might be re-appointed.

Section 102 provided for the appointment of other officers and establishments under Road Committees; section 103 for the making of rules for leave of absence, a proviso being added that the District Engineer was to have the privilege of the existing Uncovenanted Sick Leave. Then in section 104 the limit was adhered to that the salaries and establishments should not exceed one-fourth of the Road Committee's income.

Section 105 was new, and provided that the Lieutenant-Governor might appoint a Superintendent of Works for a whole division, and under section 106, for a group of districts in more than one division if the Road Committees so wished.

Section 107 was permissive, and related to the making of rules for pensions and gratuities. It was not anticipated that Road Committees would avail themselves very largely of this power.

Sections 119 and 120 defined what had been rather hazy before, namely the power of the Commissioner of the Division as to estimates prepared by Road Committees. If the estimates were passed by less than two-thirds of the Committee (which practically was never the case), the Commissioner might do very much what he thought best, provided that the total of the estimates as modified by him did not exceed the rate which the Committee had adopted for levying the cess for the year.

Under section 120, when any estimate had been passed by more than two-thirds of the Committee, the Commissioner could only suggest, and the Committee might adopt the Commissioner's suggestions or decline to adopt them as they thought fit, giving in writing the reason for so doing. The Commissioner might then either approve of the estimates or hand them on to the Government; and the Lieutenant-Governor might pass such orders upon the estimates as he thought fit, or might order the Committee to make alterations. But the Lieutenant-Governor was precluded from making such alterations as should have the effect of raising the total of the estimates above the total estimated to be at the disposal of the Road Committee, the cess being levied as determined by the Committee for the year, unless the Lieutenant-Governor considered the estimate insufficient for providing for the proper maintenance of existing works.

It was deemed necessary to leave this power in the hands of the Lieutenant-Governor, so as to enable him to deal, if necessary, with the case of a perverse Committee which refused to fix a reasonable rate for the levy of the tax.

Chapter 3 relating to the constitution and duties of Branch Committees consisted principally of details.

Section 139 and the following sections were new. They required every District Road Committee to appoint a standing Sub-Committee to audit

accounts, consisting of the Vice-Chairman and two members, who should audit the accounts regularly every month according to rules laid down for the purpose, and these accounts were to be sent to the Central Office of Accounts, and would there be checked and dealt with by such officers as the Lieutenant-Governor might order.

Section 144A was new, and was introduced on a suggestion from Behar. It empowered every District Road Committee to make bye-laws for regulating traffic on roads and for the preservation of roads and water-channels, and to impose fines for breach of such bye-laws. Every such bye-law when sanctioned by the Lieutenant-Governor and published in the *Calcutta Gazette* would have the force of law.

Chapter V, Miscellaneous, consisted of one section which enabled the Lieutenant-Governor to appoint such agency as was required in the offices of control, such as the offices of the Commissioner, the Board of Revenue, and Superintending Engineer, in the offices of account, and in any treasury for the exercise of proper control over the proceedings of Collectors and District Road Committees, for the proper examination and checking of estimates and accounts. All these establishments were entertained specially for the purposes of District Road Committees, and in all fairness they must be paid for by those Committees.

Lastly, Part IV was general, and empowered the Lieutenant-Governor to prescribe certain forms and rules.

At the next meeting of the Council MR. DAMPIER would move that the Council proceed to the consideration of the report of the Select Committee, and to the discussion of the detailed provisions of the Bill.

The Council was adjourned to Thursday, the 25th March.

Thursday, the 25th March 1880.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The HON'BLE C. T. BUCKLAND,
The HON'BLE H. L. DAMPIER,
The HON'BLE A. MACKENZIE,
The HON'BLE J. O'KINEALY,
The HON'BLE SYED AMEER HOSSEIN,
The HON'BLE KRISTODAS PAL, C.I.E., RAI BAHADOOR,
The HON'BLE C. D. FIELD, LL.D.,
and
The HON'BLE PEARY MOHUN MOOKERJEE.

HOWRAH BRIDGE ACT, AMENDMENT.

THE HON'BLE MR. MACKENZIE moved for leave to bring in a Bill to amend the Howrah Bridge Act, 1871. Under Act IX of 1871, which provided for the construction and maintenance of the Howrah Bridge, the Lieutenant-Governor had power to transfer the management of the bridge to the Port Commis-

sioners, who would then occupy the position of Bridge Commissioners under the Act. The bridge had been constructed shortly after the passing of the Act, and the Port Commissioners had been appointed Commissioners for the management of the bridge. As the Council was aware, on certain stated days in the week the bridge had to be opened for the passage of ships, and on those occasions the whole traffic between Calcutta and Howrah would be stopped, unless some other means of crossing the river were provided. Accordingly, at a very early period of the management, it was arranged, with the sanction of Government, that the Port Commissioners should take over the Railway Company's ferry steamers to carry passengers and goods, and keep up communication in the event of an accident happening to the bridge. They had also been compelled, in connection with the working of the bridge, and to prevent injury to the bridge and to ships passing through it, to purchase and maintain certain tug-steamers. But it so happened that Act IX of 1871 only gave definite powers to apply the funds to the construction and maintenance of the bridge and of the approaches thereto. As a matter of fact, however, the Commissioners had up to date, with the sanction of Government, carried on the ferry service, as well as maintained tug-steamers for hauling vessels through the bridge; and it was absolutely necessary for the continuance of the traffic and trade of the city that they should do so.

There was another circumstance which necessitated the introduction of this Bill at the present time. The Armenian Ghât was originally the terminus of the East Indian Railway; and when the terminus was removed to Howrah, the Company still maintained the ghât office as a receiving depôt for parcels and goods delivered by merchants in Calcutta, the Port Commissioners doing the work of carrying over the goods to Howrah. There was a certain advantage to the public in giving delivery of their goods to the Railway Company in Calcutta; it gave them a cause of action in the Court of Small Causes in Calcutta, and it was therefore desirable that there should be a depôt for the delivery of goods in Calcutta. But arrangements had now been entered into between the Railway Company and the Port Commissioners by which the ghâts had been transferred to the Port Commissioners, and it was proposed that the transit of goods from Armenian Ghât to the Railway at Howrah should be managed entirely by the Commissioners. The performance of this service enabled them to cover almost the complete up-keep of their steamers in connection with the bridge. But when the agreement came to be entered into, it was found that the Port Commissioners had no power to do this under the Act, and accordingly the Advocate-General advised that an amendment of the Act should be applied for.

Those were the objects of the Bill MR. MACKENZIE now asked leave to introduce. Unfortunately, owing to the pressing nature of the business, there had been no time to circulate the Bill before, but copies would be placed in the hands of the members in the course of the meeting. The first section of the Bill ran thus—

"This Act shall be, and shall be deemed to have always been, a part of Bengal Act IX of 1871."

That is to say, it gave the Commissioners indemnity for things done by them with the sanction of Government. And the 2nd section provided—

"It shall be lawful for the Commissioners, with the sanction of the Lieutenant-Governor of Bengal, to build or acquire in any manner whatsoever such steam or other vessels as they may think fit, and to employ the same or any of them in towing vessels through the bridge and generally in the service of the bridge; and also in carrying goods, merchandize, and passengers to and from such places in Calcutta and Howrah as may from time to time be fixed by the Lieutenant-Governor, and to book and receive goods, merchandize, and passengers at any such places, and to make and levy such fees and charges as may from time to time be prescribed by the Lieutenant-Governor for the aforesaid duties and services."

The Bill, it would be seen, was a very short and very simple one, and he would now ask leave to introduce it.

The motion was agreed to.

The Hon'ble Mr. Mackenzie said that as this Bill was of such a simple character, and the matter was a pressing one, and the session of the Council was drawing to a close, he would ask His Honor the President to suspend the Rules for the conduct of business in order that the Bill might at once be read in Council and referred to a Select Committee.

The President having declared the Rules suspended, the Bill was read in Council and referred to a Select Committee consisting of the Hon'ble Mr. O'Kinealy and the mover, with instructions to report at the next meeting of the Council.

ROAD AND PROVINCIAL PUBLIC WORKS CESSES.

On the motion of the Hon'ble Mr. Dampier the report of the Select Committee on the Bill to amend and consolidate the law relating to local rating for the construction charges and maintenance of roads and other means of communication, and of provincial public works, was taken into consideration in order to the settlement of the clauses of the Bill, and the clauses of the Bill were considered for settlement in the form recommended by the Select Committee.

In section 2, line 2 of the Proviso, the Hon'ble Mr. Dampier moved the substitution of the words "immovable property" for "lands." The amendment was an obvious one; the Bill assessed immovable property, and not only lands.

The motion was agreed to.

The Hon'ble Mr. Dampier moved to omit the definition of "Collector" in section 4, and to insert the following definition of "The Collector" after the definition of "Tenure:"—

"The Collector means—

I.—When used in reference to revenue-paying estates and lands comprised therein, to all proceedings connected therewith, and to the assessment and levy of taxes in respect thereof, the Collector or other similar officer in whose revenue roll such estate is borne.

II.—When used in reference to revenue-free estates and lands comprised therein, to all proceedings connected therewith, and to the assessment and levy of taxes in respect thereof, the Collector or other similar officer on whose general register of revenue-free lands such lands are borne.

"The Collector of the district" means the officer in charge of the revenue administration of a district.

Explanation.—The terms 'The Collector' and

"The Collector of the district" include any person specially invested with the powers of a Collector for the purposes of this Act."

It would be observed that the definition had been divided into two parts. As "Collector" now stood defined in the Bill it meant the Collector of the geographical division of the district in which he exercised jurisdiction. Under the Bill almost all operations of assessment, valuation, levying cess, and so on were performed, not by the Collector within whose geographical division the estate lay, but by the Collector on whose towjee it was borne. When it was intended to specify the Collector's duties in relation to the District Road Committee, the expression "Collector of the district" was used, which obviously meant the Collector of the geographical district.

The motion was agreed to.

The Hon'ble Mr. Dampier moved to omit section 19 and substitute the following:—

"19. From and after the expiry of the time allowed by the notice, or of any extended time under the provisions of section 17, every holder of an estate or tenure in respect of which such notice has been served shall be precluded from suing for or recovering rent for any land or tenure situate in any estate or tenure in respect of which no return has been lodged as aforesaid.

The Collector may send a list to the Civil Court of all such holders so making default in lodging returns as aforesaid, and such Court shall take judicial notice of the same.

Whenever the required return is lodged in respect of any estate or tenure, or whenever the valuation of any such estate or tenure has been otherwise completed, the disability imposed on the holder thereof by this section shall cease; and if such estate or tenure shall have been included in any list as aforesaid, the Collector shall forthwith give notice to the Civil Court of the cessation of such disability.

19A. Every holder of an estate or tenure in respect of which a return has been made as required by this chapter shall be precluded from suing for or recovering—

(*a*) any rent whatsoever for any land, holding, or tenure forming part of the estate or tenure to which such return relates, but which has not been mentioned in such return, unless it be proved that the holding or tenure for the rent of which the rent is claimed was created subsequently to the lodging of such return;

(*b*) rent at any higher rate than is mentioned in such return for any land, holding, or tenure included in such return, unless it be proved that the rent of such land or tenure has been lawfully enhanced subsequently to the lodging of such return.

Provided that the Collector may at his discretion, at any time within six months from the presentation of any return made under this Part, receive a petition correcting any such return;

and on the acceptance of such petition, and on payment of the amount of cess due from the date when the corrected valuation came into force, rent at the rate shown in the corrected return may be recovered. Such notices as the Collector may direct shall be served upon the parties affected by such petition at the expense of the person lodging the return as aforesaid."

These sections were merely a re-arrangement of section 19 as it stood in the Bill. Section 19 mixed up two different things. It mixed up the case in which no returns were made by the zemindar, and the consequence of which

was that he might not sue for rent at all; and secondly, the case in which, having made returns, he could not sue any tenant for a higher amount than was shown therein. The two cases were perfectly distinct.

The motion was agreed to.

The Hon'ble Mr. Dampier moved to omit the following words which stood as the last clause of section 22:—

"Any holder of land on whom such notice may have been served in respect of any lands shall, if the Collector so order, be deemed to be a tenure-holder for the purposes of assessment and levy of the cesses in respect to such lands."

This was to meet a case where a man returned as a cultivating ryot had been served with notice by the Collector and had been ordered to file a return of the rent which he receives; then according to section 22 the Collector might assess him as a ryot on the rent which he received, and not on the rent which he paid. It might come to the Collector's notice that the man had been wrongly classed as a ryot, and that he ought to be returned as a tenure-holder. And in lieu of the clause which Mr. Dampier proposed to omit from 22, he would move to insert the following section after section 23:—

"23A. If it shall appear to the Collector that any person on whom a notice has been served under section 22 has been wrongly classed in the return as a cultivating ryot, the Collector may direct that the entry be corrected, and that such person be classed as a tenure-holder; and thereupon such person shall be deemed to be a tenure-holder for the purposes of the assessment and levy of the assessment in respect of the lands held by him."

The motion was put and agreed to.

The Hon'ble Mr. Dampier moved to omit from section 44, lines 5 to 8, the words "or any shareholder of a tenure, the extent of whose share or interest in the tenure is recorded in any register of tenures," and to substitute the following:—"or whenever any shareholder in an estate, the extent of whose share or interest in such estate is recorded in any other register of lands." This amendment, he said, arose from the special definition of "tenure" given in the Bill, and the different meaning which the word had in ordinary revenue working. The point of section 44 was that when a recorded shareholder paid his own proportion of the cess, and also the cess upon the shares of other recorded shareholders, then he might call upon the Collector to recover the sum so paid by him from the other shareholders by the certificate summary procedure in the same way as a public demand was recoverable. It was very simple in the case of estates in the ordinary sense of the word, of which there was a general register under the Land Registration Act, and of which the shareholders were registered. But it was also proposed to give the same privilege to shareholders in what were ordinarily called "tenures"—tenures in estates belonging to Government, of which a register would not be kept in the general register of revenue-free lands, but in some other register which the Collector, as the representative of Government, the proprietor of the estate, kept of the tenures of the estate. What was wanted was that any person who was recorded as the proprietor of a tenure in a register which the Collector kept might recover by the certificate procedure from his co-sharers. These tenures paid revenue direct to Government, and there-

fore, under the special definitions of the Act, came not under the head of tenures, but of estates, and the section had been so altered now as to fit it to the state of things.

The motion was agreed to.

The HON'BLE MR. DAMPIER moved to insert the words "which may hereafter become due to such holder" after "cess" in line 12 of section 46D.; and to substitute the word "other" for "lower" in line 13 of the same section. The first of these amendments, he said, was a mere explanation; but the second amendment involved something substantial. The section as it stood assumed that the Collector might only lower the value of rent-free lands included in the zemindar's returns; even if he found that the zemindar had under-valued instead of over-valuing, the Collector had no power to raise the valuation. A case might occur in which the zemindar might under-value; in such a case the public revenues ought to get the benefit of the assessment which the Collector thought proper.

The motion was agreed to.

In section 51, lines 17 to 20, the HON'BLE MR. DAMPIER moved to omit the words "from the year in which the valuation took effect, according to the return of the estate or tenure in which his land ought to have been included," and to substitute the words "for the three years next preceding." The section required the holders of rent-free lands to ascertain whether the holder of the estate in which his land was situate had included his rent-free land; if he had not done so the lakhirajdar might himself make a return, and thus free himself from the zemindar's clutches. The land ought perhaps to have been included in the zemindar's return five or six years previously, but under the limitation of the law cess upon such land could only be recovered for a period of three years after it became due; it was therefore useless assuming that the rent-free holder would pay arrears for any longer period.

The motion was agreed to.

The HON'BLE MR. DAMPIER moved to insert the following section after section 62F. The section was of a merely formal character:—

"62G. The Collector may at any time with the sanction of the Commissioner revoke any order passed under section 62B, and shall give notice of such revocation both to the holder of the revenue-free estate affected and to the holder of the other estate to which such revenue-free estate was annexed."

The section was agreed to.

In sections 67 and 70 formal and verbal amendments were made on the motion of the HON'BLE MR. DAMPIER.

On the motion of the HON'BLE MR. DAMPIER the following clauses were inserted after clause (*d*) of section 70, which empowered the Board of Revenue to make rules for certain purposes:—

"(*d*) regulating the opening, keeping, and closing of separate accounts in respect of amounts of cess payable by recorded shareholders in revenue-free estates as provided in section 42A;

(*e*) regulating the proceedings of Collectors under Chapter V of this Act."

The Hon'ble Peary Mohun Mookerjee said he thought section 51 of the Bill was open to several objections. It was unanimously agreed in Select Committee that no stranger should be allowed to inspect or examine these returns. But this section allowed any person calling himself rightly or wrongly a lakhirajdar to inspect any return. In the second place, considering the circumstances under which the zemindars omitted or neglected to make a return of rent-free holdings in their estates, section 48 of this Bill provided for the filing of supplementary returns in respect of rent-free holdings in estates and tenures. But section 51 made that provision altogether nugatory by providing that rent-free holders might make returns of rent-free holdings even on the day after the date of the passing of the Act, without giving zemindars and the holders of estates and tenures any time at all to put in their supplementary returns. The last objection to which this section was open was that it was rather obscure in language; it might bring on collision between zemindars and rent-free holders, and unnecessarily give rise to numberless disputes concerning the validity of the claims of rent-free holdings. He thought it very desirable that it should be expressly provided that no cess should be payable for the same land both as rent-paying and rent-free. On these grounds he moved that the following section be substituted for section 51:—

"*Section* 51.—Every owner and holder of rent-free land who, within six months after the passing of this Act, shall not be called upon by the holder of the estate or tenure of which his lands are deemed to form a part to pay road cess and public works cess in respect of such land, may himself, after the expiry of that time, make a return of his land in the said form, and may pay to the Collector the full amount of cesses due from him for the three years next preceding.

Provided that nothing in this section shall authorize the Collector to receive any sum as cess under this section in respect of any land which the holder of such estate or tenure can show to be included by him in his return as rent-paying."

The Hon'ble Mr. Dampier said this was a very important section and one in which landholders took a great deal of interest. The Council would observe that an entirely new chapter had been introduced in order to force landholders to act up to their obligations in respect of entering in their returns for the purposes of this Bill those rent-free lands which were included within the ambit of their estates. Under the Act which was about to be repealed, zemindars were bound to include in their returns all lakhiraj lands which lay within their estates, but practically in nine cases out of ten these lands were not so included; the zemindars had in fact no knowledge of the existence of these rent-free holdings, and they did not wish to have to pay for them; it was strongly to their interest not to return them. And so these persons escaped taxation altogether for the purposes of the Bill. The chapter which the Select Committee introduced endeavoured to give effect to what was the original intention of the law: it provided inducements to the zemindars not to omit to return these rent-free lands. It gave them fifty per cent. on the amount which the rent-free holder was required to pay; and there were provisions in detail for the making of supplementary returns to supply omissions occurring in former returns —voluntary omissions possibly most of them. Then it was said that a rent-free holder was bound to satisfy himself in respect of the return in which he

ought to be included: if the zemindar had omitted him, the rent-free holder might make a return of his own land, and claim the right of paying the cess directly to the Collector in future instead of through the zemindar, thereby saving himself from penalties for not having paid in time to the zemindar, and so on. The hon'ble member opposite objected to section 51 on three grounds; first, because the lakhirajdar was required to inspect the zemindars' returns. The hon'ble member said that it was agreed in Select Committee that the zemindars' returns were not to be open to the public in general, and to say to the lakhirajdar he must inform himself was to open the returns to his inspection. MR. DAMPIER was not prepared to meet that objection at present, and must reserve the consideration of it: he believed the Select Committee did not come to a distinct conclusion on this point. Then the hon'ble mover of the amendment said that a certain time should be given within which the zemindar might return lakhiraj lands before lakhirajdars could themselves come in. That was a point which required consideration also, and MR. DAMPIER was inclined to give some weight to the objection. The third point was as to the lakhirajdar's return being used as a fulcrum by which he should claim, and try to establish a claim to hold lands rent-free to which in reality he was not so entitled. It was objected that in the course of years the very fact of a lakhirajdar having made a claim to 10 bigahs instead of 5 would practically become evidence against the zemindar, and to that the zemindars had great objection. They said: "If once we include any given land in our returns (whether rightly or wrongly) as rent-paying, that should be enough;" the lakhirajdar should not be entitled to come forward and say "it is my rent-free land." To this MR. DAMPIER would reply that he thought the Government was quite at liberty to say "if the lakhirajdar likes to come forward and to pay a second addition of the cess, let him do so, but his doing so will be no sort of evidence against the zemindar."

HIS HONOR THE PRESIDENT remarked that a memorial had been circulated only that day from the British Indian Association in which some representation was made in reference to the section under discussion; he thought the Council should be allowed some time to consider the matter before it was finally determined.

The further consideration of the motion was postponed.

Section 10 of the Bill ran as follows:—

"10. The proceeds of the Public Works Cess shall be paid into the public treasury, and shall be applied—(1) to the payment of such contributions to the District Road Fund as the Lieutenant-Governor may think proper in consideration of the said cess being assessed and collected jointly with the Road Cess by establishments paid from the District Road Fund; and (2) to the construction charges and maintenance of Provincial Public Works, and to the payment of interest on capital which may have been expended, or which may hereafter be expended on such works in such manner as the Lieutenant-Governor may direct."

The HON'BLE KRISTODAS PAL moved the insertion of the following words after the word "works"—"likely to protect the country against the occurrence of famine;" and the addition of these words at the end of the section, "and to relief of sufferings from famine."

He also moved the insertion of the following section after section 10:—

"Accounts of the moneys received and expended on account of the Public Works Cess under the provisions of this Act shall be kept in such form as the Lieutenant-Governor may prescribe, and a statement showing the receipts, expenditure, and balance of the Public Works Cess shall be published annually in the *Calcutta Gazette*."

He said it would be convenient to take the two amendments together, which referred to the application of the proceeds of the public works cess to famine purposes, and to the keeping of the accounts of the cess.

He had to apologize to the Council for taking upon himself the responsibility of raising the very important question which the first amendment involved; it was a question which he should submit legitimately fell within the functions of the Executive Government; it could only be settled by the Government of Bengal in communication with the Government of India. When he raised the question, he did so because the declarations made in the other Council, and also in this Council, fully justified him in demanding that the proceeds of the Public Works Cess should be applied to the purposes of famine as originally intended. In 1877 the Hon'ble the Finance Minister, on behalf of the Government of India, enunciated a scheme of famine taxation, and the Public Works Cess was a part of that scheme. The people of Bengal submitted to it in view of the benevolent object which it was intended to accomplish through the agency of that tax. In propounding the necessity for special taxation for execution of works likely to protect the country from the occurrence of famine, the Hon'ble the Finance Minister said—

"The measures which I have been explaining (*i.e.*, the Public Works Cess Bill for Bengal and the License Tax Bill for the North-Western Provinces) are a step in the direction which I have mentioned: by throwing upon each province the responsibility for meeting the charges necessary for providing the canals and railways required to protect its own people against famine, we give practical recognition to the principle on which the Secretary of State has insisted upon, and we obtain, to a certain extent, though far from completely, that safeguard for the Imperial revenues which he thought so necessary."

When the Hon'ble Mr. Reynolds introduced the Public Works Cess Bill into this Council in 1877, he gave the reasons which induced the Bengal Government to bring forward that measure. It was urged that the Lieutenant-Governor had been called upon by the Government of India to provide a certain annual contribution for the payment of interest upon capital laid out upon certain works; those works were the three great irrigation canals on the Soane, in Orissa, and at Midnapore, and the State Railways of Port Canning, Nulhatee, Northern Bengal, and Tirhoot. He calculated the charge for interest on the Irrigation Works at Rs. 20,69,000, and the working expense in excess of the receipts at Rs. 1,50,000, making a total charge of Rs. 22,19,000 on account of canals. The charge for interest on account of State Railways was Rs. 8,21,000, and the nett earnings and amount of traffic receipts in excess of working expenses was Rs. 2,93,000, reducing the total charge on account of railways to Rs. 5,28,000. Taking the two heads of Irrigation and Railways together, the sum for which the Bengal Government was to be held responsible amounted to Rs. 27,47,000. But this was not all. Mr. Reynolds further said—

"It had been laid down by the Government of India that it was necessary to introduce a system of provincial and local responsibility for the provision of local relief in the event of a famine. It was true that Bengal was happily less liable to the contingency of famine than other parts of India; but the two great calamities which had befallen these provinces within the last twelve years must have shown that the contingency of famine was one which we could not afford altogether to overlook."

And so, as the hon'ble mover of the Bill stated, the balance of Public Works Cess should be applied to famine purposes. In alluding to these statements BABOO KRISTODAS PAL'S object was to show distinctly the character of the Public Works Cess; it was, as already observed, a part and parcel of the scheme inaugurated by the Government of India in 1877. On referring to the last Financial Statement, it would be found that the Hon'ble the Finance Minister laid much stress on this distinctive character of the Public Works Cess. He said—

"Taking together the measures adopted in the two years 1877 and 1878, the first new taxation was the Public Works Cess imposed on the land of Bengal: this yielded in 1878-79 £355,590."

Then he went on to discuss the question whether, if there was a probability of a surplus, the License Tax Act should be repealed, or the Public Works Cess should be remitted. He said—

"Considering that precisely the same reasons were given by the Government and accepted by the Legislature for imposing fresh taxation on the trading and on the agricultural classes, with the object of protecting the country against the financial consequences of famine, and that special stress was laid upon our desire to make the burden fall with approximate equality on each of these classes, it would be difficult, for the present Government at least, to accept any proposition for treating them differently now. In fact it would be hardly possible to maintain the cesses on the land, if the tax on trades were abolished. It might be more possible to defend the abolition of the cesses on the land and the maintenance of the tax on trades."

Now BABOO KRISTODAS PAL hoped he had said enough to shew that the character of the Public Works Cess was specific; that it was intended chiefly to be applied to purposes connected with famine, but, as a matter of fact, he was sorry to say that it had not been so applied. Excepting the works which were pointed out by the hon'ble mover of the Bill, viz. the irrigation canals and railways, some of which were not directly connected with famine at all, he did not know to what other works the Public Works Cess had been applied. Under the law it was the duty of the Government of Bengal to publish accounts of the funds raised under the Act; that was a solemn obligation imposed by an Act of the Legislature, but that obligation, he was constrained to say, had not been fulfilled. There might be good and valid reasons for this departure from the law; nothing reasonable had hitherto been stated; the only reason given by the hon'ble mover of the present amending Bill was that it had been found impossible to give such an account. BABOO KRISTODAS PAL did not think it could justly be contended that the Accounts Department could not devise a system of accounts that would give a fair statement of the expenditure of the Public Works Cess. Parliament had repeatedly laid stress on the publication of authentic accounts of Indian revenues; but here was an instance in which the Legislature had

specially declared that a separate account should be kept and published, but that had not been done. He might be told that the accounts he called for might be seen in the Administration Report of the Government of Bengal. With due deference he submitted that that book was neither widely circulated nor widely read, and the public at large could not be expected to know what was contained in it; but even there the accounts were jumbled up, so much so, that it was difficult to follow a precise line as to the application of the cess. The cost of the works was given, but where the money came from could not be traced. He might be answered that the account he called for was simple enough. The Government had to make over to the Imperial treasury Rs. 27,00,000 as stated by Mr. Reynolds, and that no further details need be given; but as he had already pointed out, from the statement of the Finance Minister, the proceeds of the cess amounted to more than Rs. 35,00,000, and after paying the amount of the contract, if he might so term it, entered into between the Government of India and the Government of Bengal in 1877, there would be a balance of Rs. 8,00,000 left, and how was that balance appropriated? That balance of eight lakhs would cover the interest upon borrowed capital of two millions for Public Works in Bengal; if that fund was available, the Bengal Government could execute all those important railway communications which were considered so necessary, and the tax-payers would have the satisfaction of knowing that the money they had been paying had been spent within the country, and would be applied to their own benefit. But the misfortune was they did not know where the money had gone to. It had always been his painful duty to remind the Council that Bengal, though the most productive province of India in a financial point of view, though yielding the largest amount of revenue as compared with all the other provinces, had had from, he might say, the beginning of the century but scant justice done to it in regard to financial matters. When the Public Works Cess was introduced, he endeavoured to give a sketch of the financial history of Bengal, and in that review he quoted the opinions of Sir John Peter Grant and Sir George Campbell with regard to the very scant justice done to the claims of Bengal; and in noticing that review, His Honor the President was pleased to say—

"Sir John Grant pointed out that nothing had been done for Bengal in the way of assigning it funds for opening out communications up to 1861, and Sir George Campbell had said that very little had been done since, which was no doubt true. But it appeared to His Honor that if the hon'ble member had been arguing in favour of this Bill, he could not have adduced any stronger argument than that of those two gentlemen, because they wanted to show that whatever was raised in Bengal was spent elsewhere, and that Bengal did not receive its fair share of its own revenues. The object of the present system of decentralization was to put a stop to that state of things, and to secure to Bengal a certain amount of the revenue which it had to raise for itself."

BABOO KRISTODAS PAL appealed again to the hon'ble members to say whether that declaration had been fulfilled, whether Bengal had been allowed to spend the money she was required to raise by the imposition of the Public Works Cess. He had told them that the bulk of the proceeds of the tax which was declared applicable to the payment of interest for certain works went to meet

charges which had hitherto been borne by the Imperial Exchequer; but he was not in a position to show what His Honor the President was pleased to promise that the money that was raised was spent in Bengal. His Honor went further and said—

"In nearly every native newspaper which he had taken up lately, he had seen Bengal spoken of as the milch cow of India. The object of this measure was to remedy the state of things which had led to the common use of this phrase, to enable Bengal to use a little of its own milk, which it now contributed for the benefit of other provinces, and to substitute for fresh general taxation of which they could have no account, and from which they should receive but little benefit, a system under which they were to impose their own taxation and look after the development and expenditure of their own finances."

Thus, they were promised the use of their own milk, but he was afraid that not a drop had come into their mouths; they were told that in general taxation they could have no accounts, but that, if they were to impose their own taxation, they could look after their own finances. BABOO KRISTODAS PAL had pointed out that those accounts had not been given: that had been their position as regards the application of the proceeds of the Public Works Cess. He should wish it to be distinctly understood that he did not oppose the principle upon which the cess had been imposed. He did not for a moment question the noble and beneficent motives which actuated the Government in inaugurating the scheme of famine taxation, but he did contend that money raised in Bengal should be spent in Bengal, and that the tax-payers had a right to know how the money had been applied. His object was to strengthen the hands of Government in this respect.

None had more strongly urged than His Honor the necessity for the execution of those famine insurance works which had been announced by the Government of India two years ago. At a recent meeting of the Viceregal Council, His Honor advanced cogent reasons why those works should be proceeded with. As regards expenditure upon productive works generally, BABOO KRISTODAS PAL believed the Government of Bengal must act under the orders of the Government of India; but when a separate fund was constituted under a distinct Act of this Legislature, and power was given to the Lieutenant-Governor to apply it to particular purposes, he did not think that the special sanction of the Government of India was necessary. And if the Public Works Cess Act had distinctly laid down the purposes to which the cess would be applicable, the Government of Bengal would have been quite competent to carry out those purposes without reference to the Government of India. Believing that to be the case, he thought it was desirable that the law should contain a distinct provision that the proceeds of the cess should be applicable to specific purposes, and that the public should be furnished with accounts of the expenditure of the money.

He would not trouble the Council with further remarks on this point, but he hoped hon'ble members would bear in mind that in moving this amendment he simply asked the Council to give effect to the declarations which, as he had pointed out, had from time to time been made in the upper Council, as also in this Council, as to the purposes to which the proceeds of the Public

Work Cess should be applied; and in calling for the publication of accounts, he simply repeated a provision which existed in the Cess Act about to be repealed.

The HON'BLE MR. DAMPIER said the immediate object of the amendment was to protest against the omission from the present Bill of a clause which now stood in the Provincial Public Works Cess Act requiring that an account of the monies levied should be published annually by the Government in the *Calcutta Gazette*. This omission was discussed in Select Committee, and it was made under the immediate orders of the Lieutenant-Governor. As the hon'ble gentleman who had just spoken said, there were very valid and cogent reasons for the omission. He could understand his hon'ble friend as representing the public wishing to have an explanation of those reasons; but he could not understand his professing to entertain serious doubts as to whether the money raised by this cess was expended in Bengal or not. However, as this and several other important amendments which stood in his hon'ble friend's notice of amendments affected the Financial Department of the Government of Bengal, it would be more strictly proper that the Financial Secretary to the Government should give those reasons; MR. DAMPIER therefore left him to explain the motives and the reasons which induced the Government to ask for the omission of the clause in question.

The HON'BLE MR. MACKENZIE said:—"To the proposal that the Government should be bound by law to spend the proceeds of the Public Works Cess solely upon works for the prevention or relief of famine, the Government must, I think, offer an unqualified resistance. I am not sorry, however, that the hon'ble member opposite has raised the question, because it gives me an opportunity of meeting, and I trust of once for all dispelling some radical misconceptions, in which the hon'ble member shares, as to the position of the local Government of Bengal with reference to this tax. I must ask the Council to bear with me while I trace, with some minuteness, its origin and history. I cannot accept as history the very partial account given by my hon'ble friend.

In the Financial Statement for the year 1877-78, Sir John Strachey, after a comprehensive review of the Imperial finances from 1869-70 onwards, declared that, to place those finances on a sound and permanent basis for the future, it was absolutely essential to establish such a surplus of ordinary income over expenditure as should enable the Government to meet, from ordinary revenues, (1) all charges for the relief of famine; (2) all charges for unremunerative Public Works; and (3) all charges rendered necessary by unforeseen ordinary demands, or by urgent fiscal reforms, including under this third heading the growing charges for exchange. He pointed out that the only means by which the necessary improvement in the financial position could be gained were (1) fresh taxation, or (2) reduction of expenditure, or (3) increased productiveness of existing sources of revenue; or lastly, a combination of these means. In order to the development of existing sources of revenue, and the restriction of existing administrative expenditure, the extension of the decentralization scheme, as inaugurated in 1871-72 by Lord Mayo's Government, had been resolved

upon. But that was in itself not sufficient to secure the necessary surplus for the Imperial Exchequer. It did little more than guard the Imperial Government against further demands under certain great heads of administrative expenditure, while enlisting the co-operation of the local Governments in securing a moderate development of certain ordinary heads of revenue. It was therefore proposed to make each local Government responsible "not only for the management of many of the great Public Works that were being constructed with borrowed money, but also to throw upon those Governments the charges which such works might entail."

Now, one argument put forward by Sir John Strachey for this transfer of charge was certainly based on the patent fact that railways and irrigation canals do help to protect the localities served by such works from famine or its effects. But the main justification of the proposal lay in the statement that the works to be thus transferred were primarily works of provincial or local utility, undertaken for the special benefit of certain districts and places. "All that we now desire (said Sir John Strachey) is to enforce provincial responsibility for works of provincial utility." "We desire to throw upon every province, so far as this is now practicable, the responsibility for meeting the cost of its own local requirements." The local Governments were left to consider how far the charges thus thrown upon them could be recovered from the people primarily benefited, and what portion would have to be met by the province at large. This, and nothing more than this, was the scheme for improving the position of the Imperial finances, so far as it was expounded in March 1877; and it was in accordance with this scheme that a Bill for the levy of a compulsory irrigation rate on lands and the Provincial Public Works Cess Bill were immediately thereafter introduced in this Council.

The questions thus discussed were, Sir John Strachey admitted, intimately connected with the finance of famine relief, and the enforcement of local responsibility for the relief of famines; but on that matter no positive conclusion had, he said, been then come to. And the Government in March 1877 distinctly reserved for future consideration all plans of meeting the cost of such relief directly from local sources. The only point so far settled was that the Government of Bengal (to confine the argument to the matter now in hand) should find money locally for meeting the charges on account of its productive Public Works—past, present, and to come.

If the Members of the Council will turn with me now to the speech made by the Secretary to Government (Mr. Reynolds) when introducing the Public Works Cess Bill on the 31st March 1877, they will find it clearly stated that the proposed taxation was necessary to enable this Government (1) to meet the liability thrown upon it for interest on the capital cost of its railways and canals; (2) to provide for the completion and extension of those works which were still unfinished; (3) to provide for such new works as might be necessary in Bengal; and (4) to secure a surplus and reserve fund in hand for the provision of local relief in the event of famine. It has always seemed to me that, in view of the explicit reservation of the famine question by Sir J. Strachey, the introduction of this fourth object was at the time

somewhat premature. But it serves to make even more clear the point I aim at, which is to show that the Provincial Public Works Cess was not in fact designed to be spent year by year solely on works for famine prevention or famine relief, but intended to be in the hands of the local Government a fiscal engine for maintaining and improving its general financial position, and enabling it to meet from its general provincial balances the heavy financial responsibility thrown upon it by the policy of the Supreme Government, a responsibility which might eventually come to include charges for the relief of local distress not being of a general character. As explained by the President himself at page 32 of the Council Proceedings for 1877: "It must be remembered that we must always have some money in hand to pay for the construction of new works, and we must keep a working margin in hand; therefore it will not do to cut down the amount we are to raise to the bare sum which will be required for the interest on the works which are already completed." And again at page 57: "The Public Works Cess is a measure for raising a further sum of money for the general development of works for the benefit of the whole of those provinces." There could not have been any franker intimation than is contained in these paragraphs, that more was to be raised by the Public Works Cess than would suffice to meet the bare requirements of the Supreme Government in the matter of interest, and that the proceeds of the tax were generally to be utilized for provincial works of utility of every kind. The preamble of the Act (II of 1877) embodies precisely the idea which the Government had in view. It ran—"Whereas it is expedient to empower the Lieutenant-Governor of Bengal to levy a cess on immovable property and to apply the proceeds of the same to the construction, maintenance, and charges of Provincial Public Works." Not a word is said about famine relief from one end of the Act to the other. Nor was anything said about famine relief in the Acts for Upper India passed at the same time in the other Council. In bringing in those Acts on the 21st of March, the Hon'ble Mr. Colvin said—"The measures proposed were in furtherance of the scheme for throwing on the local Governments the responsibility of undertaking their own local works and for that purpose only. They related solely and entirely to the extension of the Provincial system to the management of public works." Sir John Strachey in the same debate summed up the whole aim and object of the North-Western Provinces local taxation (and by implication of the Bengal Public Works Cess Act) thus:—"It amounts to no more than this—we desire to give the earliest possible practical effect—an effect which shall operate as widely as it is at present in our power to extend its operation—to the principle that the local Government shall be responsible financially for the maintenance and management of works which are of special local utility."

Now I am well aware that when the Government of India had thought out the question of famine, it treated these provincial rates as part of its general scheme of famine taxation. Sir J. Strachey in his financial speeches of the 27th December 1877 and 16th February 1878 explained that, as the Imperial Government must be responsible for the relief of famine in the last

resort—"the special resources now created—must be at the complete command of the Government of India," and hence the idea has got abroad, and has somewhat rashly, I venture to say, been adopted even in the Legislative Council of India itself, that the Provincial Public Works Cess stands exactly on all-fours with the license tax. This is emphatically, as far as Bengal is concerned, *not* the case. The 'special resource' at the disposal of the Government of India arising out of the Public Works Cess is simply the amount paid over to that Government on account of interest on the capital invested in productive works within the province by the Imperial Government. If the Government of India chose to say that it had established by other means, and apart from that payment, the desired surplus of income over expenditure, and was now willing to remit that interest payment, the Government of Bengal might reduce the amount of its demand under the Public Works Cess Act; but it would not necessarily, or even probably, forego it altogether. It could still spend every penny of the money for the benefit of the province, were it allowed to do so. It would still require an established surplus of provincial income to meet the urgent demands upon it for works of every kind.

Practically the hon'ble member is inviting the Government of India to divert to the Imperial Exchequer what are meant to be strictly Provincial funds. Sir John Strachey, in January 1878, seemed indeed to contemplate some such process. In speaking of the so-called system of mutual insurance, "under which all parts of the country which are primarily responsible for supplying the wants which arise within their own area will contribute towards the relief of other parts on which famine may actually fall," he said: "Resources will be created from which the central authority will draw whatever sum is found to be requisite to discharge the obligations arising from the dead-weight of famine expenditure." But, Sir, I have shown that all that can be drawn from the Bengal Public Works Cess, as the law stands, is the interest on our productive capital outlay, and we have the benefit of all that remains to us after satisfying that charge, besides the net earnings of our works. The Government of India is relieved of so much interest on debt, and is put so far in a position of surplus to meet famine demands; while we are, by the receipts from the cess, enabled to meet the interest charges out of our general balance, and to go on with other Provincial works for the benefit of the province at large. The hon'ble member would, as I understand the effect of his proposal, stamp the whole of these receipts with the broad arrow of famine, and tender it, with perhaps one regretful sigh, to the omnivorous central authority referred to. I trust this Council will prove wiser in its generation. Provincial taxation of some kind I fear there must be. But the local Government may be trusted to make the most of the proceeds in the general interests of Bengal, and do not hamper it by impracticable restrictions and a doubtful nomenclature.

I have shown that the connection of famine with the Public Works Cess is after all only an indirect one. I believe myself that if the present famine policy had never been evolved, we should all the same have had to bear the burden of our Productive Public Works sooner or later. It was a charge that was

bound to come, and I cannot say that it is an unjust one. If we were only allowed to make the most of our revenue, the burden would be so light as not to be felt. The country would in fact grow under it, and get all the benefits of financial independence and unfettered development.

I have pointed out that *some* Provincial taxation is probably essential to the stability of Bengal finance, and I repeat this, although I know that we have at the present moment ample balances quite apart from any surplus receipts from the Public Works Cess, and although it is true that we had accumulated before the famine balances nearly as great. Sir, these balances prove on analysis not so satisfactory a possession as might at first blush be supposed. When the Provincial Services scheme was started in 1871-72, we received, as Sir George Campbell told this Council, for the management of the great spending departments then made over to us, 37 lakhs less than they had cost in 1868-69, and 11 lakhs less than the Government of India had felt bound to spend upon them in the worst year of the financial panic in 1870-71. Bare existence was all that we could hope for. On such means progress seemed necessarily out of the question. Not, however, despairing of the province, Sir George Campbell went to work, and in two years accumulated, as I have said, a considerable balance; but how did he manage this? By transferring to the District Road Funds the maintenance of nearly all the roads in the province; by seizing every windfall, and screwing out of the Financial Department every extra penny to which he could lay the shadow of a claim; by converting to general uses all sorts of petty funds; and lastly, by practically suspending all expenditure save what was actually necessary to keep the administration going. With all his burning longings for universal reform, Sir George Campbell was as cautious and thrifty an administrator financially as India ever saw. I do not myself think that justice to his great financial capacity has ever been properly done. He had an amazing grasp of both details and principles when dealing with such subjects. When he thought his position secure for the time he postponed further taxation, which he had always avowedly kept in reserve, and proceeded to allot the funds in hand in order to give Bengal the improvements, moral and material, for which it had so long been crying. But before the money could be utilized, famine swooped down upon the country, and every farthing of his accumulations had to be surrendered to feed the people of the tracts distressed.

After two years of pinching, you too, Sir, began to accummulate funds, owing mainly to the wonderful prosperity of the year 1877-78, and the fact that we had now become masters of our own excise and stamp receipts. You too, Sir, like Sir G. Campbell, thought, after a while, that the time had come when Bengal might hope to profit by its own savings, and visions most gratifying to a governing mind took shape in your Public Works Department: roads, canals, and railways, all that Bengal had pined for, were at last to be begun. But before we had had more than a glimpse of this golden age, the periodically recurrent cloud of financial depression again settled down upon the Government of India. All extra expenditure was summarily stopped, and we find ourselves, at the beginning of 1880-81, with a balance of

some 50 lakhs of rupees, not allowed to spend any of it on productive works, and doubtful if we shall even be allowed to appropriate some reasonable part of it to ordinary provincial requirements. It cannot be too emphatically stated that hitherto the Provincial Services scheme has not given to Bengal those material improvements that have always been admittedly desirable, and the prospect of getting which by our own exertions was indeed the main inducement held out to induce us to accept reduced allotments from the Imperial Government. The local Government has always found itself baulked when at the very point of attaining its desire. I impute no blame to any one for this. Circumstances must, I suppose, be held accountable. But I must ask the Council to remember that with the year 1881-82 will expire our five-year settlement with the Government of India. What the demands of that Government may then prove to be I do not care to guess. But we cannot always expect to have a succession of surplus years such as we have had of late. A very moderate local famine, or the necessities of the Empire at large, may again sweep away our balances; and then, unless we get a renewal of the farm of our excise and stamp revenue upon favourable terms, we shall have nothing to fall back upon but this Provincial Cess, which must therefore remain upon our statute-book as a financial stand-by, our only sure provision against an evil day. That we must face small local famines without looking to the Supreme Government for aid is clear from the following extract from the order of that Government in the Financial Department of the 11th December 1877:—

"15. It is an accepted principle that, for the relief of distress arising from famine, municipal and local resources should, so far as they can legally be applied to the purpose, be first exhausted; that, when these are exhausted, and only then, district resources should be employed; that, when district resources are exhausted, resort should be had to provincial resources; and that the Imperial Government should intervene only when provincial, district, and municipal resources are all exhausted.

"16. If in any case, under the operation of the rules in this resolution, a famine ends without exhausting municipal, district, or provincial resources, they should, so far as the law allows, and as is thought in each case expedient, be required to contribute towards the relief of the Imperial Treasury from the residual burden falling upon it.

"17. On the other hand, the Imperial Government undertakes to guarantee Provincial and Local Funds against insolvency, and to make such a grant under the head of "Famine Relief" as will enable the Provincial Government, at the end of a famine, to resume with efficiency the ordinary administration. At the end of the Bengal Famine of 1874, accounts were so adjusted between the Imperial Government and the Government of Bengal as to leave an aggregate net balance of five lakhs of rupees at credit of the Provincial Funds and Local Funds at the disposal of the Government of Bengal for provincial purposes; an analogous net balance of six lakhs of rupees has been promised to the Government of Bombay at the end of the present famine. It is a duty especially incumbent upon the Provincial Government so to husband and economise its resources of all kinds in times of famine as to reduce to a minimum the contributions which may thus fall upon the Imperial Government."

I repeat, however, that the Provincial Public Works Cess as raised is not meant to be spent directly upon famine works. Its collections appear in our accounts in gross under the heading of Provincial Rates, and go to swell our

general revenues. The gross traffic and other receipts of our canals and railways are shown also in the same way as Provincial Revenues. On the expenditure side of the budget we show the "interest payable on canals and railways capital outlay," and their "working expenses," under separate headings, like any other major head of service. The payments shown as on account of "famine insurance" are a perfectly distinct heading, and represent that portion of the license-tax collections made over to the Supreme Government direct. This is how the accounts are kept under the orders of that Government, and we have no power to alter it.

From what I have said it will be evident that no separate annual account of the expenditure of the Provincial Cess is possible. The provision regarding the preparation of such an account got into the Act of 1877 by a simple mistake and failure to realize the conditions of the case. The idea was to follow, in respect of the provincial cess, the lines of the Road Cess Act, and because an account can be rendered, district by district, of all expenditure charged to these purely local funds, it was assumed, without due reflection, that a provincial account could be kept of the provincial cess in the same manner. But when we sanction a provincial work, we do not charge it against any special fund in the way imagined. The Lieutenant-Governor assigns to public works from the surplus revenue at his disposal a lump grant as large as he can afford to make it, and the money is then distributed in a detailed estimate by the Public Works Department. We cannot pick out of this the works executed with the identical sums paid in as cess. All that the public need care to know is this: that we are spending on public works, and on the interest payments to the Government of India, a sum at least equal to what we receive from the tax-payers and from the Imperial allotment on that particular account. Any one can satisfy himself as to this by a reference to the Annual Administration Report, and it is only by a study of the facts and figures there explained that the real position can ever be properly understood. I may, however, state for the information of the Council that while for the current year our net receipts from the cess are estimated at 34½ lakhs of rupees, our payment to the Supreme Government for interest on works is Rs. 35,07,000. In the coming year we estimate to get net Rs. 32,71,000, and we pay on interest Rs. 36,56,000. On the face of the cess account, therefore, the balance of eight lakhs, regarding which the hon'ble member was so anxious, does not even exist. What balance there is, is against the local Government. It is only because our railways and canals are now beginning to pay that we derive any profit from the bargain regarding their transfer, even after crediting the whole proceeds of the Public Works Cess. I may further observe that we estimate that we shall have spent on Public Works during the four years ending 1880-81, in spite of all hindrances, 13½ lakhs more than we have drawn from Public Works Cess, Irrigation, Navigation, State Railway receipts, Ordinary Public Works receipts, and the Imperial allotment for works, all taken together. The public may thus feel satisfied that the Provincial Public Works Cess is being fully utilized, and the Council will, I trust, see that the amendments of the hon'ble member are such as ought not to be accepted."

The Hon'ble Mr. Mackenzie.

HIS HONOR THE PRESIDENT said that before putting the amendment he wished to make a few remarks on the subject of the charge brought by the hon'ble member against the Government, of not complying with the terms of the Act, and of not having expended the money raised by the Public Works Cess in the manner intended at the time when the Act was passed. He must begin by saying that there appeared to be the most extraordinary confusion in the mind of the hon'ble member, and he thought he might say in other minds too, as to the contract which the Government of Bengal made with the Government of India at the time of the passing of the Act, and the Cess engagements which the Government of Bengal made with the public at the same time. He found himself here brought forward by the hon'ble member as a sponsor, at all events, of the Famine Insurance Fund, and of having brought in the Cess Bill with the view of providing a fund for expenditure on famine works. Now, if his hon'ble friend would try and recollect a little what did occur at the time, he would find simply this—that the Government of India, not the Government of Bengal, had a great scheme two years ago for providing funds for meeting famine expenditure, and they also said their intention was to invest the funds so raised in public works which would be useful to the country and prove practically a protection against famines. The question was how they were to get the money to originate this fund. One of the first proposals which occurred to them was that the system of decentralization might be carried very much further than it had been, and that the Government of India might be relieved of the interest they were then paying on a great number of works constructed in various provinces of the country from which the Imperial Government got no particular benefit, but which, there was no doubt, were of very great benefit and protection to people in certain tracts of the country, and they said not unnaturally:—"We have got to impose on the people of the country some new taxation, and it seems to us that the proper way to do this will be to make over to each province the charge for interest upon these works," leaving them to raise the money necessary to pay this charge in the manner best suited to the conditions of the people and the province. On being consulted on the subject, HIS HONOR was bound to admit that if taxation was to be resorted to in order to enable the Government of India to form a famine fund, and be in a better position to meet extraordinary calls, there could be nothing better for these provinces than that it should raise its own taxation in the way the local Government thought best, and with this money relieve the Government of India of the interest upon capital raised for these works; the Government of India taking that money and using it for the purposes of that famine fund. He did not propose to follow the history of that famine fund. They had had an explanation from Sir John Strachey of the history of that fund, and he hoped they understood what it was. HIS HONOR had nothing to do with that. He accepted the position and gave his quota towards that fund, and he believed it had been used as it should have been done. At any rate it had not been misapplied by this Government, nor had he ever bound himself that the money raised under this cess should be exclusively expended in the construction of works for the relief

of famines. The famine administration was entirely foreign to the question: that was an Imperial question; all that the Government of Bengal undertook to do was to raise the money to relieve the Government of India of these charges upon their capital, in order that they might have a surplus to use in a certain way. What they did up to that time was to relieve the Government of India of a charge of over 27 lakhs. This charge of 27 lakhs at the time they took it over had since increased to 36 lakhs, and this was what he had to pay for the coming year to the Government of India on account of the responsibility which he incurred on the first passing of the Public Works Cess Act. He only hoped to receive 32 lakhs under the Cess Act, and he had got to pay 36 lakhs. His friend had accused him of taking more money than was wanted and appropriating it to some other purposes. So far from that being the case, he had to pay away money received from other sources to the local Government to meet the liabilities which he incurred when he took the responsibility on him under the original Act.

Of course it might be said that in doing this he had made a very bad bargain for Bengal, and so far it might be said he was to blame. But he did not think this was the case, because, when he undertook to do this, it appeared that if he got the maintenance of these great works in the hands of his own officers, subject to his control and inspection, they might make those works yield a revenue which would cover this accruing interest, and also leave them a surplus which would be spent for the general interests of the province. He found that in 1877-78 irrigation receipts were 5 lakhs, and this year they have grown to 10 lakhs, and he hoped that in the coming year these receipts would be increased from 5 to over 11 lakhs. He hoped that this would show that they had done something to improve the working of this measure, and that they had not made a bad bargain.

Then as regards State Railways. When he took them over the receipts from these railways for the first year were only 7½ lakhs, the actual receipts for the closing year were 24 lakhs, and for the coming year they were estimated at a very moderate scale at over 27 lakhs, or an improvement of over 20 lakhs. Therefore he derived some satisfaction from the feeling that it might be said that under their local administration these railways had been worked to the public good; they had, on the whole, made a very good bargain for Bengal. Therefore, neither on the score of a bad bargain, nor on the score of a bargain at all, could any very substantial complaint be made against the Government.

With reference to His Honor's remarks as to the Famine Insurance Fund, on the occasion of the discussions regarding the original Bill, his hon'ble friend had avoided quoting the whole of them, probably because they were too lengthy, but His Honor would like to add to what had been read out by quoting a little further. In alluding to the remark about Bengal being allowed to spend something more of its own money, His Honor had said that the object of the present system of decentralization was to put a stop to that state of things, and to secure to Bengal a certain amount of the revenue which it had to raise for itself—"And to substitute for fresh general taxation of

which they could have no account, and from which they should receive but little benefit, a system under which they were to impose their own taxation, and look after the development and expenditure of their own finances. But in order that this might be effected, the Government of India naturally asked to be relieved of the cost of constructing local works, which that Government could not have met at the present time without imposing some form or other of taxation. The question was whether they should have local taxation and local administration of the funds thus raised, or imperial taxation and imperial administration of the new revenues to be raised. There was no question of local taxation or no taxation at all. He thought that the principle now introduced was a very sound one, and he looked forward to the measure now inaugurated as one of the first steps towards the progress and prosperity of the country."

He thought it was quite clear from that, that it was not a question of Bengal raising a certain sum of money for famine work, but the question whether the Government of India, for its own purposes and its own work, should impose upon Bengal fresh taxation, or whether the Government of Bengal should be allowed to come forward and say,—"We will pay you the full interest upon the capital you have sunk in certain works in Bengal, if you will leave us alone to raise taxation as we like, and will permit us to spend any surplus which we may get from that taxation on the general improvement of the province." He had then very distinctly stated what this charge upon new taxation was. He said as regards railways, although they had to meet interest upon the capital as a first charge, there was not one of them which in a few years would not pay the interest upon capital. But they had also to provide capital to extend the system of railways. He gave his reasons for thinking that there had been no measure which would be more beneficial to Bengal than the extension of railways. He had from the very first passing of the Act advocated the great principle of taking up railway after railway, and of selecting one sound scheme after another, and constructing them with capital on which the province only paid the interest, the works selected being those which would turn out most beneficial to the country, would protect it from famines, and also increase its wealth and prosperity, as the proceeds of the decentralization scheme. He had never swerved one moment from that principle. He had a sufficient sum of money to pay for the guaranteed interest upon capital, which would give a very fair prospect of covering Bengal with a network of railways. But such works were now suspended. It might not happen in his time, but he did not in the least despair of seeing this scheme recommenced, which they had left off on a very mistaken view of the facts. He had said so much on the subject on other occasions that he was sure everybody would understand distinctly that there was no one in the country more anxious than he was to see money expended in the way he had indicated —in the way of developing the scheme of railways. The money was there now; they had not spent it. He was now in correspondence with the Government of India trying to get railways recommenced, and he hoped even in the course of the next few days to receive a favourable reply to one application.

Any way, the money was there, and even if the money was not spent on railways, there were other public works, such as the South Coast Canal and other works in Orissa, which could be worked out as ordinary provincial work. He had not the slightest intention of allotting money raised from this fund to any purposes other than public works. He defied anybody to say that they had not spent in good useful works in the last few years very much more than they received from that fund to meet the requirements of the Act.

As to the question of accounts, His Honor could give the hon'ble member an account in five minutes. It was such a very vague, misty matter, that he could give the hon'ble member any number of accounts which would satisfy the requirements of the law, but which would not show how the money was spent; because they had not only spent the money under the Act, but they had paid interest upon capital to an extent very much beyond what they had collected.

The fact that the interest on public works capital exceeded the proceeds of the Cess Act was in itself an account sufficient for the purposes of the Act, but, as a matter of fact, the Government of Bengal has spent so very much more on public works than it has received from the Public Works Cess that such an account would simply be misleading, and would not represent the progress in public works which has really been made. The matter had before been fully explained, and the inutility of such an account had been clearly demonstrated. He therefore hoped that the matter would now be allowed to drop, especially when it was seen that the Government had, so far from doing less than it ought to have done, done very much more. He hoped the hon'ble member would not press the amendments he had moved.

The motion was then put and negatived.

The Hon'ble Kristodas Pal moved to omit section 19. When the Road Cess Act was first passed it was considered a tentative measure, and doubt was expressed as to whether, when a return was not submitted as desired, a double penalty should be provided, first, by means of a daily fine, and next, the disqualification to sue for rent. Even when it was discussed, there was considerable difference of opinion as to whether the double penalty should be retained, and he found that Mr. Wordie, then a member of this Council, took serious objection to this provision of disqualifying proprietors of land from suing. He asked whether the punishment was not disproportionate to the offence, and said—

"In a country like this, where the revenue laws were carried out with great stringency, and where a man's estate was sold up for arrears of revenue, it would be an extreme course that for his recusancy he should not be allowed to collect his rents. He thought it could be shown, from the policy of the Government for many years back, that there ought to be some proportion between the offence and punishment. In old times capital punishment was inflicted for very trivial offences; and the punishment here proposed was of such severity that it might be called capital in the circumstances. If a man would not submit his return, fining him fifty rupees a day was a sufficient penalty, and it might be expected that he would then come forward and do what was required. But if it was said he was not to recover his rents, particularly when there might be a disposition on the part of his tenants to refuse payment, in such cases the disability to sue would act as an incentive to under-tenants to hang back and throw difficulties in the way of collection."

His Honor the President.

BABOO KRISTODAS PAL would go further, and say that experience had shown that there was no necessity for retaining the double penalty. The returns were submitted by zemindars with most commendable punctuality; the task was novel; very few zemindars kept papers with regularity, still they laboured hard, and submitted returns with which district officers were satisfied. In many cases the time was extended and fines were remitted. However opposed the zemindars were to the imposition of the cess on principle, they conformed to it loyally, and their conduct should receive some recognition. They received no recompense for collecting the cess, and put themselves to no end of trouble in collecting it; but still the Bill would put them beyond the pale of the law for misconduct of which they had not been guilty. He thought the daily fine, and the new provision declaring that a fine might be levied though an appeal had been lodged, would be quite sufficient for the purpose of securing the timely deposit of returns. If still the zemindar should continue to neglect filing his or the zemindar's return, and the Collector could not proceed with the assessment in consequence of recusancy, he had only to make inquiry through his own agency and assess the zemindar accordingly; so that under no circumstances would the work come to a stand-still. He moved that section 19 be omitted, and the necessary alterations be made in section 19A.

The HON'BLE PEARY MOHUN MOOKERJEE said in Hooghly, Burdwan, and the 24-Pergunnahs there was not a single instance in which it was found necessary to put the corresponding section of the existing Act into operation. The section which authorized district officers to impose fines was found to be sufficient for the purpose of enforcing regularity in the filing of returns.

The HON'BLE MR. FIELD said hon'ble gentlemen had heard it stated that experience had shown this section to be unnecessary. He did not think that this argument for its omission could be supported. It might be perfectly true that returns had been made and sent in with a regularity and punctuality not before expected, but how far this particular provision had been instrumental in bringing about that punctuality the Council had no means of knowing, as there had been no experience of the law without the provision. He thought it very desirable to retain this provision in order to secure a continuance of that creditable regularity and punctuality which zemindars had hitherto shown. For these reasons he opposed the amendment.

The HON'BLE MR. DAMPIER thought the answer just given conclusive so far. If with this penalty hanging over them the zemindars were punctual, it could not from that argument be concluded that with this penalty taken away they would be equally punctual. Still there was the daily fine to be considered, and on the whole MR. DAMPIER would be very glad if the Council would postpone the consideration of this question till the next meeting, in order that he might make inquiries on the subject. He should be inclined to meet the wishes of the hon'ble gentlemen opposite if he thought the omission could safely be made.

The HON'BLE MR. O'KINEALY said he trusted the hon'ble member in charge of the Bill, when he made inquiries of the numbers of cases in which this penal clause had been imposed, would also make inquiries as to the number of cases in which fines were inflicted. If fining by itself was found

sufficient to get in all the returns in Bengal, it would be a very serious thing for the Council to say that in addition to that which had been sufficient it was necessary to retain a clause which had never been enforced and experience had not shown to be required.

The Hon'ble Mr. Dampier said it was impossible to say how far fines had been effective; the effect of a fine could not be dissevered from the effect of this provision held *in terrorem* over zemindars in addition.

After some conversation, the further consideration of the motion was postponed.

The Hon'ble Kristodas Pal moved the omission of the words "at the expense of the person lodging the return as aforesaid" at the end of section 19A. The ground on which he proposed this amendment was this, that the zemindar was allowed no remuneration for collecting the cess; he worked the whole machinery of the tax through his own agency, and if any slight mistake was made in the return, the Road Fund should be in equity charged with the cost of serving the notice of correction, and not the zemindar.

The Hon'ble Mr. Dampier said he did not think the ryot should be made to pay the cost of a notice correcting a wrong assessment made by the zemindar.

The Hon'ble Mr. Mackenzie considered it perfectly right that the zemindar should pay for his own mistake.

The motion was negatived.

The Hon'ble Syed Ameer Hossein moved to omit the words "in addition to the amount due to him under section 46D" in line 8, section 47. He said that he did so in the interest of a large number of petty rent-free holders, who were distinct from those known as revenue-free holders. Generally speaking they held from 2 to 5 bighas of land, and in their circumstance in life they were as poor as cultivating ryots. The provision of the existing law for the collection of cess from these lakhirajdars was that the zemindars collected from them the full amount of cess as it was assessed by the Collector, whereof they paid three-fourths to the Collector and retained one-fourth as the cost of collection. When this Bill was first introduced in Council, a provision was made in it to the effect that, if the rent-free holder made default, he was liable to pay double the amount of the cess. In explanation of that provision, it was said that certain honest zemindars had suffered pecuniary loss by the laches of their rent-free holders, and it was for that reason that a penalty was imposed on the defaulting rent-free holders. That provision Syed Ameer Hossein considered to be fair; but he saw that that provision had since been improved upon. In section 47 it was provided that, if a rent-free holder made default, he would be liable to pay *three times* the cess assessed by the Collector, or *six times* the amount of cess which the zemindar paid to the Collector on account of the lakhiraj land, *i.e.* half the full rate. This was indeed very hard, especially when it was to be considered that, if the zemindar or the tenure-holder made default, he would only have to pay the amount of cess, plus interest at the rate of 12 per cent.; but the rent-free holder would have to pay a penalty of *six hundred* per cent. He hoped that the Council would not pass such a provision.

The Hon'ble Peary Mohun Mookerjee said the present Bill made the zemindar liable to pay in four quarterly instalments, so that he would have to pay the cess imposed upon lakhiraj lands three months in advance; and taking into account bad debts, and the delay in recovery in times of adversity, he submitted that the provision contained in section 47 was not at all unreasonable. He would therefore oppose the motion as to the imposition of a fine of five times the amount of cess paid by the zemindar (not six times, as the hon'ble member supposed). It was nothing more than another way of expressing a fine of double the amount of cess payable by the lakhirajdar in addition to the amount due on account of arrears of cess; it was simply the mode of expression which made it appear at first sight to be very hard: the amount which the lakhirajdar was liable to pay was not five times the amount of the cess payable by him, but double the amount.

The Hon'ble Mr. Field explained that the penalty was not one of 600 per cent., but of 200 per cent., namely, the original cess and double that amount in addition. It bore the proportion of one to three, and it must be remembered that the clause was a penalty clause. The object of the penalty was to compel the lakhirajdar to do what he ought to have done in the first instance; and having regard to the small amounts payable, and to the penalty clauses in old Acts, double the amount of cess was really a very small penalty.

The Hon'ble Mr. Dampier said the question here was nakedly this. To induce the zemindars to assess lakhirajdars, they were allowed to retain fifty per cent. to cover losses as well as the trouble and unpleasantness of the duty. The Select Committee had acted on a strong feeling that it was necessary to give inducements to zemindars, and it was therefore provided that if the lakhirajdar did not pay when the amount was due, the zemindar might recover the whole amount and twice that amount as a penalty. The question for consideration was, as a margin of fifty per cent. was allowed the zemindar to cover losses, &c., was it necessary to give so heavy a penalty in addition? The result of the Select Committee's deliberations was to give this additional compensation to the zemindar. Some thought the zemindar should have twice the amount due, others that interest only at 12 per cent. per annum should be allowed, provided the amount of interest never came to less than a penalty of the whole amount.

After some conversation the further consideration of the motion was postponed.

The Hon'ble Kristodas Pal moved the omission of section 67. He considered this provision superfluous. The point was regulated by the law of evidence, and he did not think an Act of this Council could affect the general law of evidence, although a similar provision did exist in the District Road Cess Act of 1871.

The Hon'ble Mr. Dampier thought it better to retain the section. It was contained in the present law, and if the section was left out, it might be contended that the Legislature had some object in doing so.

His Honor the President remarked that if the section was left out the law would still remain as it was now: it was only a repetition of the law

and imposed no fresh liabilities on anybody. Keeping the provision in the Bill made it more symmetrical.

The motion was then by leave withdrawn.

The Hon'ble Kristodas Pal said that he thought section 81 the most important section in the Bill; it enumerated the objects to which the Road Cess Fund was applicable. The first was "the payment of the cost of establishment entertained and expenses incurred by the Collector as mentioned in section 63." In performing this part of his duties the Collector would practically have no check upon him, and would collect the cess under the general provisions of the law, and if he took any arbitrary or illegal proceedings, the Bill gave him power to draw on the Road Cess Fund for the payment of any damages to which he might become liable. Baboo Kristodas Pal did not object to that principle; he thought that if the Collector *bonâ fide* took proceedings which turned out to be illegal or arbitrary, he ought to be indemnified the costs or damages in which he might be cast. But he thought that should be done with the sanction of the Lieutenant-Governor. His Honor would see that the proceedings were really *bonâ fide*, and that the Collector did not wilfully override the law and commit any irregularities. If it was thought the Lieutenant-Governor might not have time to supervise these proceedings of the Collector, he hoped that duty would be delegated to the Board of Revenue, but some check ought to be provided on the proceedings of the Collector. He moved that the costs should be made subject to the sanction of the Lieutenant-Governor.

The Hon'ble Mr. Dampier observed that the Collector collected the cess for the District Road Committee, and in the course of his collection he might render himself liable to damages by some mistake in procedure; then the District Committee were to indemnify him. His hon'ble friend said the indemnity should require the Lieutenant-Governor's sanction. Mr. Dampier did not think that necessary. If the District Committee agreed, they could indemnify the Collector; if they did not agree, they would immediately refer the matter to the Lieutenant-Governor, who was the common superior of both. He did not think any amendment was necessary.

The Hon'ble Kristodas Pal said cases had come to notice in which things had been done a little roughly, and there were districts in Bengal in which the Road Cess Committees were not capable of acting in the manner in which the hon'ble member suggested. A great many of the Committees were under the control of the Collector himself: he did think that some provision like this was required.

After some conversation it was agreed that such cases were to be made subject to the sanction of the Commissioner of the Division, and the section was amended accordingly.

The Hon'ble Kristodas Pal said he had submitted, when the Bill was introduced, that the funds of District Committees were insufficient for the legitimate objects of the cess, and that no funds would be available for the grant of pensions to officers. The subject was discussed by the Select Committee, but he was not satisfied with the result of their deliberations. It was well known

that officers of municipalities were not entitled to pension, and he did not think that pensions were absolutely necessary to induce men to serve District Committees. The supply of intellectual labour was so great that persons could easily be got to serve for decent pay, and it was not necessary to hold out further inducements by giving pensions. He moved to omit the words "or pensions" in clause 2, line 5 of section 81.

The HON'BLE MR. MACKENZIE said he was entirely in favour of retaining the words which the hon'ble member wished to omit. He thought himself that the municipality of which the hon'ble member was so active a member did not attach sufficient importance to giving pensions as a means of securing cheaper and better service. It would, however, be seen on reference to the Bill that practically no pension would be given save in the case of the few mohurrirs and clerks who spent their whole lifetime in the service of one and the same District Committee, and certainly such men ought to have pensions.

HIS HONOR THE PRESIDENT said it was a question whether it was not far cheaper to give pensions as a rule than to employ people without the prospect of pension; if pensions were not given, the servants of District Committees would keep on long after they were capable of performing efficient service, and when they could no longer work, they would have to turn out into the streets to starve. As the hon'ble member had just shown, the operation of this clause would have but little practical effect in the working of the Bill.

The motion was negatived.

The HON'BLE KRISTODAS PAL moved to insert the words "such means and appliances not being of a nature to compete with private enterprise" at the end of clause 4 of section 81.

He said it did not come within the legitimate functions of Road Cess Committees to provide steamers for the conveyance of passengers; canals and rivers under the Act were to be considered as corresponding with roads, and district funds might well be applied to their maintenance and improvement; but having constructed or improved a road, he did not think it was the duty of the Road Cess Committee to maintain *dak gharies* for the conveyance of passengers over the road. Similarly, because the Committee would maintain waterways, such as rivers and khals, it did not necessarily follow that they should supply steamers for the convenience and comfort of passengers. In Eastern Bengal there were so many creeks, khals, and rivers that it would certainly be an advantage to the public if steamers were kept up for facility of communication and traffic. But that was a matter for private enterprise, and it would be an interference with private enterprise if steamers were maintained at the expense of the Road Cess Fund. He should not be surprised if the Collectors, with steamers thus placed at their disposal, should get up district *Rhotas* parties and thus make a cheap show of their sympathy with the people. If the words "means and appliances" were intended to enable the Committee to compete with private enterprise, then he submitted the words ought to be omitted; if that was not the meaning, then he had no objection to their retention; but the provision ought to be made so explicit as not to authorize Road Cess Committees to embark in private enterprise.

The HON'BLE MR. DAMPIER explained that the section was so worded to make it clear that District Committees should have power to provide steamers for communication in the district, or between the district and an adjacent district. Circumstances might arise in which it would be very desirable for a District Committee to nurse a young project until it became capable of being worked independently of the Committee.

The HON'BLE MR. FIELD thought the proposed amendment had a dangerous tendency. It did not distinctly state the nature of the private enterprise which was not to be interfered with—was it private enterprise already in existence, or contemplated private enterprise? Was it to be open to any one, who proposed to raise capital to start a steamer or carry on any other enterprise, to commence litigation with the District Committee as to whether some particular thing which they had done fell within the purview of the words or not. As the amendment stood, it was clear that the insertion of the words proposed would only put the section in a shape which would be likely to lead to litigation.

The HON'BLE MR. MACKENZIE said the hon'ble gentleman did not seem to be consistent with himself; he was perfectly willing that District Committees should contribute towards the construction of railways for the conveyance of passengers and goods by land, but not for steamers for water communication. There were many cases in which a steam-ferry, for instance, would be of great advantage to the district communication. In Sarun, for instance, the District Committee was most anxious to bring the district on the other side of the Ganges into communication with the railway on this side, and it was willing to contribute a small portion of its funds to induce private capitalists to take up the project; and hon'ble members would, he believed, admit that this was just an enterprise of the kind which District Committees ought to be authorized to encourage and foster. The whole of these provisions were subject to the limitation that the work must be such as to benefit the district supplying the money.

HIS HONOR THE PRESIDENT observed that in many districts money could not be more usefully spent for the use of the poorer classes of the people than to bring them in communication with large lines of steam vessels or railway centres by means of cheap ferry-boats, and thus enable them to take advantage of water communications in a way which they could not otherwise do. The Chittagong and Eastern Bengal cases which had been instanced had been pressed upon him. He could see no harm, where a water channel existed, in allowing local Committees to provide means to enable the people to avail themselves of that means of communication in a way that would make it useful. It did seem inconsistent to allow Committees to construct railways and provide locomotive power upon them, and to say that to make water communication useful they must not provide locomotive power. In certain districts very much more benefit could be derived from the establishment of ferries than by making roads which were not so useful. In Backergunge, which was a rich district, a great deal had been done in this respect, and a great deal more could be done by bringing the district into communication with the great lines of

steam communication. His Honor did not think there was the slightest chance of the provision being abused, and he was sure its operation would be of great benefit to the country.

The motion was then negatived.

Section 81 was then agreed to with a verbal amendment made upon the motion of the Hon'ble Mr. Dampier.

The Council was adjourned to Saturday, the 3rd April.

Saturday, the 3rd April 1880.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*
The Hon'ble G. C. Paul, C.I.E., *Advocate-General.*
The Hon'ble H. L. Dampier,
The Hon'ble H. A. Cockerell,
The Hon'ble C. D. Field, LL.D.,
The Hon'ble A. Mackenzie,
The Hon'ble J. O'Kinealy,
The Hon'ble Syed Ameer Hossein,
The Hon'ble Kristo Das Pal, C.I.E., Rai Bahadoor,
The Hon'ble J. B. Knight, C.I.E.,
The Hon'ble Peary Mohun Mookerjee,
and
The Hon'ble F. Prestage.

ROAD AND PROVINCIAL PUBLIC WORKS CESSES.

On the motion of the Hon'ble Mr. Dampier the further consideration of the Bill to amend and consolidate the law relating to rating for the construction charges and maintenance of district communications and other works of public utility and of provincial public works was resumed.

The Hon'ble Kristodas Pal moved to add the following proviso to section 81:—

"Provided that no work the maintenance of which is at the time of the commencement of this Act a charge upon Provincial Funds shall be made a charge upon the District Road Fund."

He had not much to say in support of this motion. The principle which it involved was self-evident. When the Road Cess Act was passed, it was distinctly stated that the proceeds of the cess should be applied to local purposes, such as roads and canals, which would directly benefit the districts in which the cess would be levied. A clear distinction was drawn by Sir George Campbell between Provincial and Road Cess Funds. In making his financial statement in this Council in March 1871, he remarked—

"He should like to produce a budget distinct from, and independent of, the arrangements for local cesses, and which he might call the provincial budget, so as to distinguish provincial taxation from that question of local cesses. Provincial taxation and local cesses were in

principle quite distinct from one another, and he thought that the question of local cesses for specific local purposes should, as far as possible, be kept quite apart from the other question of provincial finance. The local Rating Bill would be for proper local purposes, as the hon'ble member who asked leave to introduce the Bill had pointed out to the Council in submitting his motion. In point of fact local funds and cesses of various kinds had existed in several provinces long anterior to the provincial arrangements now for the first time about to be commenced. And he might say here that the Bill of which the hon'ble member had charge, was a measure which had been under consideration before the scheme of financial decentralization was made known by the Government of India."

Sir George Campbell continued—

"He was the more inclined to avoid any appearance of confounding the two subjects; because, while some other local Governments had, he hoped unjustly, incurred the imputation of improving the occasion to add to their provincial resources more than the burden imposed on them by the Government of India, he was specially desirous that the question of local rating in Bengal should not be prejudiced by any suspicion of the kind, that it should be quite understood that any proposal for local rating would be in good faith for really local objects and subject to effective local administration."

Nothing could be more explicit or more emphatic than this declaration of Sir George Campbell. The question, however, was, whether the promise made by Sir George Campbell had been fulfilled? Had the road cess been applied to the relief of the Provincial Exchequer, or had the proceeds, as declared in Council, been applied only to local improvements in the districts in which it was levied? That question had been answered by his hon'ble friend the Financial Secretary to Government at the last sitting of the Council. He said—

"When the Provincial Service scheme was started in 1871-72, Sir George Campbell told the Council that we—namely, the Government of Bengal—received for the management of the great spending departments then made over to us, 37 lakhs less than they had cost in 1868-69, and 11 lakhs less than the Government of India had felt bound to spend upon them in the worst year of financial panic, viz. in 1870-71. Bare existence was all that we could hope for. On such means progress seemed necessarily out of the question. Not, however, despairing, Sir George Campbell went to work, and in two years accumulated, as I have said, a considerable balance. But how did he manage this? By transferring to the District Road Funds the maintenance of nearly all the roads in the province, by seizing every windfall, and screwing out of the Financial Department every extra penny to which he could lay the shadow of a claim; by converting to general uses all sorts of petty funds, and, lastly, by practically suspending all expenditure save what was actually necessary to keep the administration going."

He (Baboo Kristodas Pal) was really taken by surprise when this extraordinary statement came from the Financial Secretary. He could hardly believe that Sir George Campbell having just a few months before made an emphatic declaration in this Council for the maintenance of a clear and broad distinction between the Provincial Fund and the Road Cess Fund "in good faith," should have broken his own word and summarily transferred to the Road Fund the maintenance of nearly all the roads in the province,—that is, the roads hitherto maintained out of the Provincial Fund. In proposing this amendment his object was to prevent, if practicable, this sort of misappropriation (if he might so term it) of the Road Cess Fund. When the road cess was imposed, the cess-payers were distinctly told that, as the resources of

the Government were limited for the improvement of local communications, it was necessary to raise additional funds for that purpose; and that the money which would be thus collected would be applied to the improvement of communications in the district. In fact, that it would be devoted to the improvement of the estates from which the contributions would be levied. But if the Road Cess was applied for the maintenance of old roads which had hitherto been charged to the Provincial Funds, how was good faith kept with the people. The road cess was not imposed for the purpose of affording relief to the Imperial or Provincial Exchequer; its object was to help the landholders to bind them together and co-operate with each other for the improvement of communications which would lie in their own estates. But, as it had been shown by the Hon'ble Financial Secretary, this promise had not been fulfilled. The Road Cess Fund had now taken the place of what was formerly called the Amalgamated District Road Fund, and he found on reference to the Administration Report of 1872-73 that the Amalgamated District Road Fund consisted of the following sources of revenue:—

Firstly, of old one per cent. road cess on land levied in Shahabad; secondly, of road tolls; thirdly, of ferry tolls; and fourthly, of canal tolls.

Road tolls were, he believed, being gradually done away with, and he dared say his hon'ble friend the Financial Secretary would be able to show that in all districts in Bengal road tolls had been abolished. Baboo Kristodas Pal thought that was a very proper measure; they were a source of annoyance and trouble and vexation to the people, and the sooner they were abolished the better. By dispensing with this source of income the Road Fund lost about one lakh of rupees a year.

He found from the administration report referred to that more than five lakhs were received from the ferry tolls. The proceeds of those tolls were formerly credited to the Amalgamated Road Fund, and the Government distributed it by annual allotments. From the commencement of the financial year 1872-73 those funds had been made strictly local and made over to the district where they were raised, and were managed by local committees. Thus, that source of income was also gone. But the greater portion of the old Amalgamated District Fund came from grants-in-aid from Government. It appeared from the report that the grants-in-aid generally amounted to about ten lakhs per annum; but since the imposition of the road cess these grants, if he was informed rightly, had disappeared, so that the road cess was now the only source of income for the maintenance of district roads. Having withdrawn the aid which the Government gave before, he did not think it would be justified to impose on the Road Fund the maintenance of works which used formerly to devolve on the District Fund. As he had already shown the distinction made by Government between the Provincial Fund and the Local Fund was quite clear, and it would be only acting in accordance with the declaration then made to provide that no works which at the commencement of the Act were maintained out of Provincial Funds should be charged to District Road Cess Funds. The object of the Road Cess Fund, as stated by His Grace the Duke of Argyll when Secretary of State for India,

was to provide for works the advantages of which would be palpable, direct and immediate. In other words, local funds should be applied to local works; it could not therefore be just to apply the proceeds of the road cess to works which might benefit the whole province and which ought in fairness to be provided for out of provincial funds.

It might be argued that it would practically be difficult to make a distinction between works Provincial and Local. The Government of India had already made a distinction between works Imperial and Provincial. In the financial statement of 1877 Sir John Strachey had clearly shown what class of public works should be charged to Imperial and what to Provincial revenue. The legislature by creating separate funds for separate works,—Imperial, Provincial, Local, and Municipal,—had also contemplated that the proceeds of each fund should be applied to the objects for which each fund was created, and such being the case, BABOO KRISTODAS PAL did not think it would be inconsistent if a distinction was made in the way proposed by the amendment.

The HON'BLE MR. MACKENZIE said:—"I must take objection to this proposal, that the law should be so worded as to prevent the spending of any road fund money on any work that may now happen to be classed as Provincial. The hon'ble member has made much of the statement contained in my speech on one of his former amendments, to the effect that Sir George Campbell, by transferring to the District Road Committee most of the roads in the province, succeeded in effecting savings in the Imperial allotment as a whole. Sir George Campbell, in acting as he did, was only giving effect to the whole aim and object of the road cess legislation. It was because the Imperial Government would not find money for Bengal roads that this local cess was passed to enable us to make them for ourselves. All the money that we received from the Government of India *for roads* was spent upon roads; but it is obvious that that was utterly insufficient, and if Sir George Campbell, by making into district roads what were fairly such, prevented further demands upon the available savings at his disposal from other sources, he only did what was perfectly legitimate even from the hon'ble member's point of view. But the fact is that the argument which the hon'ble member anticipated would be addressed to him must be so addressed and carefully pressed home. In Bengal it is quite impossible to draw a hard-and-fast line of distinction, based upon any intelligible principle, between local and provincial roads. There were, it is true, certain main or trunk lines which, before the days of railways and canals and river steamers, were recognized as of Imperial importance. These were most of them great arteries of military communication, the routes by which troops and military stores passed from the metropolitan arsenals to the camps and stations of the upper and outer provinces. But their importance from this point of view has in many cases passed away, while there is not one of them which is not now, as regards the *segment* of it passing through each district, perhaps the most important local road within the district. The roads recognized at present as provincial are chiefly these—

1.—The Grand Trunk Road to the North-Western Provinces and its branches.

2.—The Orissa Trunk Road and its feeders.
3.—The Chota Nagpore system.
4.—The Calcutta and Jessore Road.
5.—The Calcutta and Diamond Harbour Road.
6.—The Ganges and Darjeeling Road with branches.
7.—The South-Eastern Trunk Road (Dacca to Chittagong).
8.—Certain Calcutta roads.
9.—Certain frontier roads.

There is, so far as I know, no present intention of reducing their number or of transferring them to District Committees; but there is hardly any of the first eight in the series that might not, as regards some part or other of it, form a perfectly fair charge on local funds.

The limitations imposed by the Bill upon the expenditure of each District Road Fund are, I submit, already sufficiently precise. It can only be spent upon objects which directly benefit the district and improve its communications. That, Sir, seems to me the true test to apply from an administrative point of view. Financially the tax-payers are sufficiently protected by the limitation placed in the law on the rate of cess leviable. These considerations permit in themselves a sufficient answer to the proposal before us.

I am not, however, altogether content to let my opposition to this proposal rest on these narrow grounds. The hon'ble member has quoted to us certain passages from a speech by Sir George Campbell, containing views upon the relative characteristics of Provincial and Local taxation. No one has more respect for Sir George Campbell than I have, but I think this Council may well hesitate before it accepts as final the views upon local taxation enunciated by a somewhat *doctrinaire* Governor in the first gust of provincial independence, and when the question was not before him in any well argued form. At the risk perhaps of being misunderstood myself, I feel bound to say that I oppose this and other of the hon'ble member's suggestions, because I consider, first, that they unduly seek to fetter the Lieutenant-Governor's administrative action; and secondly, that he endeavours to set up a distinction in kind between local and provincial taxation, which in this country has no real existence. The theory of provincial government in India is not after all a mere magnified shadow of the constitution of the Calcutta Corporation. The Lieutenant-Governor of Bengal is not as yet reduced to the position of a much badgered Chairman, content, for peace-sake, to have his hands tied by anticipatory resolutions upon every conceivable point of detail. He is still the personal representative of the Imperial power within the province, and as such, is personally bound to administer, or cause to be administered, all its resources for its best advantage. For this he has to answer, first, to the Viceroy in Council and Her Majesty's Government at home; and secondly, to public opinion; and precisely in that order. A wise Governor will endeavour of course to satisfy both authorities, so far as his conscience lets him; but he should never, I submit, while the circumstances of this country remain as they are, and while his personal responsibility lasts, out of weak deference to uninstructed sentiment, allow his hands to be tied unduly, or submit to having

his legitimate freedom of administration curtailed by superfluous legislation. We have, I am well aware, so far grown out of the patriarchal system in Bengal that legislation has become a necessary part of our constitutional existence. We have to govern upon definite plans and in accordance with civilized methods. We must embody our ideas in clear legal enactments, and attach sanctions to secure their observance. It is sometimes desirable, for educational purposes, or to prevent misconception, to make an Act embody in sufficient detail, or in full outline, some connected administrative scheme; but even in such cases the Council would, I contend, do well to bear in mind the advice of Sir Henry Thring, who makes it a cardinal rule of legislation that "Procedure and matters of detail should not, except under very exceptional circumstances, find any place in the body of an Act; but should, where possible, be left to be prescribed by a court or department of the Government." I for my part would never willingly consent to putting a single clause into a law that was not absolutely required for practical purposes. We are, in this Council at any rate, bound to assume that Government will exercise its discretion rightly in any given case, and were the local legislature to attempt to forestall that discretion in matters of pure administration, such as the Government may fairly be expected to decide upon sound general principles, it would be injuring both the Government and the country, substituting rough running for smooth, and to put it plainly, irritating an overworked executive by an unnecessary and foolish system of legalised nagging. The Council will not I trust deem me wanting in respect, or consider me out of order, if I go on to say that I am not, I believe, alone in thinking that consciously or unconsciously this tendency does occasionally show itself in some recent Bengal Acts. Select Committees are not always content to give the precise amount of legislative assistance asked for, but go on to provide for every possible detail, and to stop up every possible outlet for responsible action. Valuable as local and detailed knowledge is, and much as the Government is to be congratulated on being able to secure such assistance as it gets from the hon'ble members of this Council, it is quite possible to overload our measures with excess of precision on unimportant points. Compare, for instance, our Bengal Survey Act with the Act that sufficed for British Burma; our Wards' Act with the sections that do for the North-Western Provinces. Something more of detail may be required in Bengal; but certainly nothing like the quantity there is. We cannot here trust a district officer to serve a notice in a reasonable way, but must prescribe every corner of the district in which it is to be stuck. Soon we shall be fixing the diameter of the tom-toms to furnish that everlasting 'beat of drum' that rolls its monotonous rataplan through all our later Acts, or we shall be asked to regulate the width of the official foolscap. Looking back upon some of the proposals pressed upon us in Committee, I consider it fortunate that this identical Cess Bill does not fix by law the precise spot on the annual account-sheet where the Vice-Chairman should sign his name, and affix penalties for his failure to dot his i's. Section after section, under Part III, seems to me to be not really necessary as a part of a law, but to be matter rather for executive management. But as they are unobjectionable, and in accordance with the genius of our local

legislation, I accept them. But I do emphatically protest against the idea that the Lieutenant-Governor in his own province is not fit to decide whether a district road is useful for local purposes or not.

Further, Sir, I do not think we ought to recognize any such distinction of kind between provincial and local taxation as is logically involved in the hon'ble member's proposal. The origin of the taxing power is not the same in India as in England. Here it emanates from the Supreme authority; there it emanates from the people itself. To confound the two systems is common enough in the political cant of the present day. Men talk, and newspapers write, as if India were all the same as Middlesex. They apply the same tests to its administration as to Parliamentary Government and the ancient local systems at home. They babble about the separation of executive and judicial functions, about local self-government and representation, and the like, forgetting that outside the Presidency towns these shibboleths of so called progress may prove to be mischievous when they cease to be only meaningless. Whatever may be the future of this country as regards representation in its Government, it is absurd to pretend that as yet any such theories hold good. It may be politic and wise to encourage such aspirations, and it seems an ungenerous thing to throw cold water upon ideas with which we as Englishmen necessarily sympathise. But if we *are* to cultivate habits of local self-government among the people, we must proceed by cautious and well considered steps. They must learn to walk before they are allowed to run. They must learn to stand before they are allowed to walk. And in the work of practical government we must look more to the actual fact, to the precise stage of political growth with which we have to deal, and beware of injuring material progress by a leaning to Utopian theories. Bengal is an advanced province in many ways, but it is not after all quite on the same platform as Great Britain yet. We must remember, therefore, in discussing questions of taxation, that in England the people in Parliament assembled taxes itself, or passes enabling laws providing for local taxation of kinds. The town populations in their Town Councils tax themselves for municipal purposes. The counties tax themselves for roads and other objects. In India, on the other hand, a foreign, but we hope benevolent, Government taxes the people *ab extra* in their own interests, and often in their own despite. Viewed thus, municipal and other local taxation is in India as distinctly Imperial taxation as the income tax itself. Were there no such local cesses, the Government would in its own interests have to provide for the police, conservancy, and lighting of its towns, and the making and maintenance of communications. In order to bring in economy of administration, to secure the help of those locally interested, and to reconcile local populations to special burdens, the Government transfers the assessment and management of certain sources of revenue to local bodies: but the ultimate responsibility still lies with Government, and it is for the Government to lay down the limits within which the system shall be worked. That, Sir, I conceive to be the only sound theory of local taxation in India. It is thus, in my opinion, entirely for Government to decide whether the cost of any particular work is one which it can equitably charge to a local fund. That is,

it seems to me, not a point on which it should ordinarily submit to have its hands tied by legislation.

Of course when the Government consents to embody in a law provisions for the delegation of a portion of its taxing power to local authorities, it must be bound thereafter by the conditions which it then accepts; and in respect of municipal taxation it has been content to work very generally upon Western ideas, and to abandon to a large extent even the appearance of effective control. It is held that self-interest will lead the people of towns to do what is best for themselves, and that the tax-payers are thus brought so directly into contact with the administration of the funds that no very decided check is necessary from above. But I for one am not prepared to admit that this theory can be applied in its integrity to the working of the District Road Fund.

It would certainly not be for the advantage of the tax-payers to have Local taxation of this sort treated as different in kind from Provincial and Imperial taxation. It is to them a distinct gain that the road cesses are now shown as Provincial rates in the Imperial accounts. The full extent of the public burdens is thus clearly seen. But if the taxation is of the same kind as Provincial, Government must have a potential voice in regard to its application. Government has, in the absence of any real representative system, to protect the interests of the many, of the people at large, and in their interests it must decide, and it alone, what communications are a fair charge upon district funds and what on the general funds of the State. For these reasons I would reject absolutely the hon'ble member's proposition.

That the Government when left at liberty to administer all the funds at its disposal will do so wisely may not unfairly be inferred from the manner in which the imposition of these cesses has been utilised to free the trade of the country from tolls. An income of Rs. 96,600 annually has been surrendered by the abolition of tolls since the Cess Act was passed. On the 1st of this month the very last tolls in Bengal upon either provincial or local roads ceased to exist. But in any case so long as Government is really responsible for the administration, and so long as self-government is not a fact of the present, but a dream of the future, the Lieutenant-Governor must retain effective control over the application and distribution of these provincial and local cesses.

The Hon'ble Mr. Prestage said that, although he laboured under the disadvantage of not having been present at the last meeting of the Council, he thought he should not give a silent vote to the amendment or the Bill now under consideration, and in the hope that it might possibly influence the hon'ble mover of the amendment, and other hon'ble members who would in any way limit the powers of the Government to raise funds for the purposes which were contemplated in this Bill. He thought, he should say, that they need not look far to see that it was most certainly to the interest of the rate-payers of the day, as it would be to the advantage of those of the future, that the Bill should become law. He might mention a case, in fact he might say he was intimately acquainted with a case, in which a first-class railway had been constructed through a most populous and prosperous district in Bengal. The railway had cost some £20,000 a mile to construct, it had been

open for traffic for nearly ten years, and up to the present time there were not only no roads to many of the stations, but in some places the stations could not be approached without committing trespass. It had been frequently represented that, if funds were not forthcoming for the construction of the roads, an effort should be made to take up the necessary land to give a right-of-way and free access to the stations. If they also looked to the Northern Bengal State Railway, which ran through some 120 miles of the productive district of Rungpore, they found that really little or nothing had been done to make roads to the stations on the line. The state of affairs appeared to him to be this. The general tax-payers had contributed something like 95 per cent. of the outlay necessary to construct first-class railways through most important districts, and for want of the remaining 5 per cent. required for the construction of roads leading to them, the communication in most cases was still most imperfect.

Then, if they looked to the rich rice-producing districts of Backergunge, which the hon'ble member had described as the granary of Bengal, although a first-class railway ran direct from this port for 150 miles in the direction of that district, and from the terminus of the railway a first-class waterway led down to and served most thoroughly the whole of the district, yet, up to the present time, it had received little or no benefit from the great outlay incurred upon the railway; and in judging of the cost of improving such water communications, it must be remembered that we had no £20,000 a mile to provide to construct the way. It existed, and cost nothing to construct or maintain, and all that it would be necessary to do would be to incur the trifling outlay of something like £200 a mile to put a most useful line of steamers upon them. He was well acquainted with the working of such steamer services as were required, which, during the past three years, had yielded a return of something like 70 per cent., and during the past half-year the very handsome return of 15 per cent. had been shown. It seemed to him that somewhat fine distinctions had been made in this Council and elsewhere between what was termed Imperial revenue and Local funds; and, however necessary and proper it might be to maintain such distinction, they must, he thought, all agree that, so far as revenue-producing powers were concerned, Bengal, if not the milch cow, was certainly the backbone of India; and if ever the time came that the Imperial revenues had to make good guaranteed interest upon railways, meet expenditure on famines, or any such Imperial liabilities, they might make sure that Bengal would be burthened the most. It therefore behoved this Council, and more particularly the majority of the hon'ble members who sat on this side of it, to do their utmost to render this great producing province still more productive, and this, he submitted, could best be done by improving its internal communications. He would therefore place ample funds at the disposal of the local Government; and in placing these funds in its hands, he would in no way hamper it in determining the exact manner in which they should be spent. He said again he would place the Government in ample funds, and throw upon it the responsibility of spending them judiciously.

His Honor the President said that, before putting the amendment, he would not follow hon'ble members through all their arguments, but would say a few words upon the distinction which had been made between Imperial and Local works. He should like to express his concurrence in a point which had been referred to with considerable force by the Hon'ble Mr. Mackenzie, namely, the mischief of interfering with the Government in petty details in the drafting of Bills by those who were not thoroughly conversant with the actual working of measures; if these provisions were adopted they would operate injuriously towards the District Committees instead of giving them relief as was intended. The only cases in which the duty of maintaining Provincial works was made over to District Committees was where a road had been one of the great provincial high roads, and became abandoned by the substitution of some other superior communication in the same direction; the question then sometimes arose whether the road should be allowed to fall to pieces, or should be made over to the Committees of the various districts through which it passed, and be maintained and kept up for local purposes; that was the only case in which a provincial road had been made over to District Committees. But he would mention one or two roads out of the list given by the Hon'ble Mr. Mackenzie, showing how very possibly the necessity for such transfers might happen again. Take for instance the Calcutta and Diamond Harbour Road, or the Ganges and Darjeeling Road. The Diamond Harbour Road was now a Provincial road, but it was the great line of communication between Calcutta and the lower reaches of the river, and for Provincial purposes it was necessary to maintain it. Members were perhaps aware that there was a scheme for making a railroad to Diamond Harbour, and if the Government constructed a railway for Provincial purposes, it would be no longer necessary for it to maintain throughout the district of 24-Pergunnahs an old metalled highway which had ceased to be of any use, except for purely local purposes, and the first thing would be to give up that road. The District Committee would be but too ready to accept a present of a good metalled road, and to have it free of charge only for the cost of maintenance. It would then become one of the most important district roads. Again, there was a project for connecting Khoolna and Jessore by a railroad with Calcutta; if that were done, it would not be necessary to keep up the road that passed through Baraset. It would become an ordinary feeder road, and would be used like any other district road.

To enact that the Government should not make over to District Committees any road the maintenance of which was now a charge on Provincial revenues, would be not only to hamper the Government, but to prevent its giving over a valuable present to District Committees. Therefore His Honor might say that whatever had been done in this way had been done, not in the interest of the Government, but of the District Funds. So far from Government shifting its proper burden on the District Funds, the Government was every day giving grants from Provincial Funds to Local Funds to help them to open up communications. Take for instance the Nattore Road. The Government had given one-and-a-half lakhs towards this particular district road because it was a very important one. There was hardly a road throughout the province of

any importance which had not been helped more or less by grants from Provincial Funds; it was a very important and most useful way of employing surplus proceeds of Provincial and Local Funds. Not a single complaint had come to HIS HONOR that the Government had imposed upon District Committees the maintenance of roads the expense of which they should not be called upon to bear, and he therefore thought the amendment before the Council was quite uncalled for.

The motion was then put and negatived.

The HON'BLE KRISTODAS PAL moved the substitution of the words "or sentenced to imprisonment for a criminal offence" for the words "or of any disgraceful conduct" in section 84. He believed hon'ble members would agree with him in thinking that the words "disgraceful conduct" were very vague and indefinite; they might be interpreted in different ways by different persons according to their peculiar idiosyncracies. The object of the section he believed was to shut out from Cess Committees persons who might disgrace themselves by committing offences punishable with imprisonment, and that object would be attained by substituting the words proposed by him; a provision similar to what he proposed obtained in the Calcutta Municipal Act.

The HON'BLE MR. DAMPIER remarked that a great deal of what had been said on the previous amendment by the hon'ble member on the right (Mr. Mackenzie) applied to the present amendment. The question was whether the exercise of the discretion which the head of the Government would possess under this section was not sufficiently guarded by public opinion and the check of the Supreme Government. If in the exercise of that discretion he considered that any member of a District Committee had done something which rendered him unworthy of remaining on that Committee, the head of the Government should have full authority to turn such member out. MR. DAMPIER thought the discretion might fairly, and ought to, be left in the hands of the Government.

The HON'BLE MR. MACKENZIE said the section as it now stood in the Bill was an absolute encroachment upon the law as it existed in Act X of 1871, which provided that the Lieutenant-Governor might for any cause which he might deem sufficient remove any member of the Committee whom he might deem it expedient to remove. That discretion was now limited by the insertion of the words "disgraceful conduct," and he thought it went far enough.

HIS HONOR THE PRESIDENT remarked that this was a matter which might possibly be left to the discretion of the Lieutenant-Governor; he could conceive many cases in which a man might be guilty of disgraceful conduct which might make it improper to retain him on a Committee which was entrusted with the administration of large funds, and which might make it disagreeable to the other members to serve with him, but he yet might not have been sentenced to imprisonment for a criminal offence.

The motion was negatived.

The HON'BLE KRISTODAS PAL moved the substitution of "shall" for "may" in section 99, line 1. He was afraid he might be accused again of interfering with the discretion of the Lieutenant-Governor. The section

provided that the Lieutenant-Governor may, upon the recommendation of two-thirds of the members voting at any special meeting, remove the Vice-Chairman. He submitted that when two-thirds of the members voted for the removal of the Vice-Chairman, the Lieutenant-Governor should consider it his duty to remove such Vice-Chairman, for he could no longer command the confidence of the Committee. In such cases BABOO KRISTODAS PAL thought the law ought to be imperative. He wished to state that he would be the last person to interfere with the legitimate discretion of the Government, but where a public body was constituted under the law, and certain privileges were conferred upon it, it was but right that they should be duly respected in practice. It was nothing but fair and reasonable that when two-thirds of the Committee expressed their want of confidence in their executive head, the Lieutenant-Governor should give effect to that vote.

The HON'BLE MR. DAMPIER said this was rather a matter for His Honor the President to express an opinion upon, and it would really be a matter of importance if a time came when there should be a struggle, such as was going on in France in the elections of Mayors of Communes, between the Government and the local bodies. In such a case it would be an enormous power in the hand of the Lieutenant-Governor. The Council must first make up its mind as to what it intended, and then express it in words. The legal members on his right and left were of opinion that the word "may" in the section was imperative, and if so, Mr. Dampier thought it would be necessary to qualify it by the addition of the words "in his discretion."

HIS HONOR THE PRESIDENT said he thought this was a case in which it was only reasonable that the Government should be left with the discretion which it had always exercised. Cases had arisen in which a little local clique, which was entirely against the general feeling of the whole district, had formed a party against an officer; the combination might be caused by a temporary misunderstanding, and the misunderstanding might be cleared up, and the Committee be sorry for it the very next day. He had known cases in which things of that sort had happened; therefore it was necessary that power should be given to Government to exercise its discretion as to whether, having the case in all its bearings before it, it should remove the Vice-Chairman, or endeavour to arbitrate and conciliate both parties.

The motion was negatived, and the words "in his discretion" inserted after the word "may."

The HON'BLE KRISTODAS PAL moved the omission of sections 105 and 106. His reason for doing so was because these sections had a tendency to multiply expenditure. The works which were ordinarily executed by Road Committees were of a simple nature,—repairs of roads, water-communications, and so forth,—the execution of which did not require much professional skill: if they were honestly executed the object would be sufficiently attained. The Divisional Superintendent of Works referred to in section 105 would practically occupy the position of a Superintending Engineer of the Public Works Department; he was an officer of very high rank, and from his standing in the service was supposed to possess considerable knowledge and skill in his profession. The

question was whether, for the superintendence of such simple works as ordinarily fell within the scope of a Road Cess Engineer's duties, it was necessary that the Committee should employ the services of such a highly paid officer as a Divisional Superintendent. He thought that what was wanted in the mofussil was good road-makers and not engineers of high scientific attainments. He believed the Executive Engineers now employed by the Committees were generally competent to look after the works under their charge, and it would be simply a waste of money if they were compelled to employ a high class of officers in the position of Divisional Superintendent of Works.

The HON'BLE MR. MACKENZIE said:—"I am lost in astonishment at the hon'ble member's statement that district works are of such a simple and ordinary description that the District Engineers may not only be men of very ordinary calibre, but that they need no looking after. Why, Sir, our late departed common friend, Rajah Digamber Mitter, spent years of his life and much of his money in endeavouring to convince both Government and the public that all the evils human health has suffered in Lower Bengal came from bad alignment of our roads and railways. He charged not merely our District Engineers, but the first class talent that designed our trunk railways, with water-logging the whole country by ignoring the conditions of its drainage and natural fall. I am quite sure he for one would say that you cannot have your district road-making too closely supervised. These sections come to us in fact from the Public Works Department. They are the fruit of sad experience. If all accounts be true, so far from involving a useless increase of expenditure, they will actually effect a saving of public money by ensuring its proper application. The heavy bridge works required in a country like Bengal, and the difficult questions arising in connection with waterway, drainage, and the like, make the district road work anything but a simple matter. These sections are highly important and cannot be abandoned.

"The section was inserted on the recommendation of the Public Works Department; it was found that the construction and maintenance of these roads running across large marshes and waterways in the country required high scientific knowledge and close inspection. It was believed that for the advantage of the districts, and the proper application of money, the District Engineers should be subject to the superior professional supervision and check of Divisional Superintendents; these sections had been introduced in the interests of the tax-payers and the benefit of the Road Fund."

HIS HONOR THE PRESIDENT said that officers of the class contemplated by these sections were appointed last year on representations received from the Local Committees of some of the larger districts. The works executed out of the District Road Fund were not at all of that simple character which the hon'ble mover of the amendment seemed to think; some of the larger Committees had really very important works to construct; large bridges which cost several lakhs of rupees, and roads crossing the drainage of enormous tracts of country, and which were calculated to do irreparable mischief if they were not properly laid down. From no less than four divisions applications had come to employ special officers of the Public Works Department who should relieve the

Superintending Engineers of their duty of supervising the works under the charge of the District Committees. As things at present stood, every petty work for which a scheme was prepared had to go before the Superintending Engineer in the Public Works Department, who had also got his own work to do in the regular branch of the service. The result was that some of the Committees had schemes pending for four or five years which were sent backwards and forwards, between the Superintending Engineer and the Committee, in consequence of having been unskilfully prepared, merely because the Superintending Engineer had not time to go to the spot and point out where the defect lay and get it remedied at once. There had been roads under construction for a number of years from the inefficiency of the District Engineer and the impossibility of the officer of the Public Works Department going to the spot. It was on the special recommendation of the District Committees that the appointments he had mentioned had been made. But some of the Committees had complained that although they were most anxious to get an officer of this sort, one or two of the smaller Committees in the division withheld their consent and deprived them of the advantage of such an officer: it was on this account that this provision was inserted. Where a Divisional Superintendent was appointed, it was found that the waste of money from bad engineering had ceased, and great saving and advantage to the districts concerned had resulted.

The motion was negatived.

The Hon'ble Kristodas Pal moved the omission of the following words at the end of paragraph 2 of section 121 :—

"Unless such rate shall in his opinion be insufficient to provide for the proper maintenance of such works as are contained in the statement prepared under section 110 or 112"—

and to substitute the following in lieu of paragraph 3 :—

"If it shall appear to the Lieutenant-Governor that the proceeds of the cess at the rate so determined will not suffice for the purpose of maintenance of such works as are contained in the statement prepared under section 110 or 112, the Lieutenant-Governor may order the suspension of new works, or such portion of new works, as he may consider necessary in order to provide for the due maintenance of works already in existence."

The object of the section was to give power to the Lieutenant-Governor to raise the rate to the maximum under certain circumstances, although a lower rate might be recommended by the Road Cess Committee. The power of the Lieutenant-Governor in such cases was limited. It was provided that the Lieutenant-Governor might increase the rate where sufficient provision had not been made for the proper maintenance of the works contained in the statement prepared under section 110 or 112. It was certainly the first duty of the Committee to maintain the works they had undertaken to maintain, and if due provision had not been made, the head of the Government should insist on proper provision being made for such maintenance. Practically no Cess Committee would be so thoughtless as not to provide for the proper maintenance of the works in their charge; but if they should be so self-forgetful as not to make due provision for the maintenance of the works, power should be given to the

Lieutenant-Governor to require the Committee to omit certain new works in order to provide for the proper maintenance of works already executed, instead of giving him a power to raise the rate. He hoped that in proposing this amendment he would not be accused of interfering with the discretion of the Lieutenant-Governor. The Road Cess Committees being charged with the administration of the fund were the proper parties to decide what rate should be fixed for the levy of the cess; but if they from oversight or neglect of duty omitted to provide for the maintenance of existing works, it should be in the discretion of the Lieutenant-Governor to insist upon their proper maintenance.

The HON'BLE MR. MACKENZIE said:—"The proposal that the Lieutenant-Governor shall not be at liberty to compel the Committee to raise a sufficient sum to maintain the works entered in its own general district scheme of roads, unless he can effect this by suspending new works entered in their annual estimates, is again one that ought not, I think, to be accepted. Apart from the fact that the Committee may be supposed not to have entered new works in their estimates unless they were really required, and that the maintenance of existing works is a primary duty that they should under no circumstances be able to evade, I feel bound to object, upon the principle already enunciated, to the further attempt to withdraw from the Lieutenant-Governor a discretion which he has felt it necessary to claim. The hon'ble member has deprecated that argument, but it is one that must be urged all the same. I have already troubled the Council at some length with certain views upon the theory of Government and local taxation in India. Those views apply exactly, and with special force, in the present case. The local agencies in charge of the funds raised by taxation, whether Collectors or Committees, are as yet only ministers on behalf of the supreme authority.

"A Bengal district is a vast tract of country with an enormous and often heterogeneous population. The members of the Road Committee have no such direct and pressing interest in the administration of the funds as the Municipal Commissioners have in the case of Town Funds. Each of them probably knows only a small portion of the area affected, and pays but an insignificant fraction of the total cost. He is personally unknown to the vast majority of the tax-payers, and feels no sort of personal responsibility to them in detail. Hence the Government, through its officers, must retain a very potential influence in the administration of the fund. I consider myself that the Cess Act, as it now stands, goes to the very verge of what is prudent in this delegation of control. Samples of the result are given in the paper circulated regarding the appointment of engineers. It is admitted that in that particular the Government must recall a part of the authority delegated. I am certainly not myself in favour of extending it in other directions, and I think in this matter of works the Bill still leaves far too wide a discretion to the local Committees. That, however, is not the view that the Government desires to take at present. It consents to carry on the experiment very much on the existing lines; but it *must* retain a power of deciding as between provincial and district works, and it *must* be in a position to compel this local agency to do its duty in case of recusancy. I know

as a fact that these powers are sometimes necessary, and that District Committees can do very foolish and wrong-headed things when the humour favours them. I cannot too often repeat that maladministration of the District Road Funds must in the end lie at the door of the Government itself; and no pretty phrases about local self-government and the like will serve to relieve the Lieutenant-Governor of his personal responsibility in this matter. The local Government cannot, I submit with deference, afford to be led away by unreal and specious arguments of a general kind, such as are commonly ventilated by irresponsible European advisers, and are caught up so readily by native publicists out here, but which do not bear analysis, and are in the mouths of most who use them mere empty phrases echoed from the commonplace of an entirely different state of society. Government must retain power sufficient to protect the interests of the State and the people at large. It must be in a position to compel the proper expenditure of these funds, and especially the proper maintenance of recognized district works. It insists upon very little when it only insists on that last point, and leaves the Committees to start new works at their own free will."

The motion was negatived.

The Hon'ble Mr. Dampier would ask the Council to go back to the amendment in section 19, the consideration of which was postponed. As he explained last time, the old section 19 was cut up into two sections—19 and 19A—and the amendment of the hon'ble member was to omit section 19. The substance of the present amendment was that the disability which was imposed in the existing Act on holders of estates who failed to file returns within the time required by the notice should be withdrawn. It had been said that the power of imposing a daily fine was sufficient, and Mr. Dampier had promised to make certain inquiries. He had made inquiries from about thirty officers, and he was bound to say there was a wide divergence of opinion on the subject. Fines had been very largely imposed, but something like ten per cent. only were levied; all the rest were remitted when the returns were filed. Considering that was the first time such returns were called for, he was not prepared to say that the returns were not filed with fair punctuality; they were required within three months and were filed within six. There were one or two gentlemen who were refractory; they appealed against the fines imposed, instead of filing their returns, and it was for such cases that this extra penalty was necessary. Many officers said they had no doubt the effect of this disability hanging *in terrorem* over landholders was the cause of punctuality; others thought it might be dispensed with. That being the state of the case, Mr. Dampier would say *factum valeat* and retain the provision imposing the disability. It would hurt no one who did not intentionally and perversely disobey the law.

The Hon'ble Kristodas Pal then withdrew the amendment to omit section 19, which he moved at the last meeting.

The Hon'ble Kristodas Pal moved the omission of the words "and on payment of such fee as the Board of Revenue shall from time to time determine" in lines 2 to 4, paragraph 2, of section 31. The question of exempting applications under this section from the payment of a fee was considered in Committee, and he there gave notice of this motion.

The HON'BLE MR. DAMPIER said the question involved in this amendment was this, when a man made a return was he entitled to have a copy of the return and valuation given to him without paying even the fee for copying it? He thought it was fair that the applicant should pay for the work done in making a copy.

The amendment was by leave withdrawn, and the word "copying" inserted before the word "fee."

The HON'BLE KRISTODAS PAL withdrew the amendment of which he had given notice, to add to the last paragraph of section 101 the words "subject to an appeal to the Lieutenant-Governor whose decision shall be final." This section, he said, referred to the suspension or dismissal of District Engineers. Under section 102 common clerks, when suspended or dismissed by the Committee, were allowed to appeal to the Commissioner, and it was very desirable that a high officer of the rank of District Engineer should not be liable to be summarily suspended or removed by the Road Cess Committee. He found, however, that the hon'ble mover of the Bill, by the amendment of which he had given notice, proposed to withdraw this power from the Committee altogether, and to provide that the Engineer should be suspended or removed only by the order of the Lieutenant-Governor. If the hon'ble mover thought such a course necessary, BABOO KRISTODAS PAL had no objection to offer to it, and would withdraw his amendment.

The amendment was then by leave withdrawn, and on the motion of the HON'BLE MR. DAMPIER the words "or the Committee" were omitted from line 3 of the last clause of the section.

On the motion of the HON'BLE MR. DAMPIER clause (2) of the definition of "Estate" in section 4 was omitted, and the following definition was added to the section:—

"'Year' means the cess year as determined by the Lieutenant-Governor under section 11 of this Act."

In section 5 a verbal amendment was made on the motion of the HON'BLE MR. DAMPIER, in accordance with the exclusion of guaranteed railways from the tax.

On the motion of the HON'BLE Mr. DAMPIER the words "under the rules laid down in this Part," were inserted after "cess" in clause 2, line 2, of section 34, with the object of declaring the procedure to be used in valuing and assessing estates which were found out or had come into existence by alluvion after the valuation and assessments had been completed.

On the motion of the HON'BLE MR. DAMPIER, the following proviso was added to section 39 to meet the case of estates in which, according to custom (as in Backergunge), rents were not payable till the end of the year:—

"Provided that, in cases in which, according to local usage or to the terms of any agreement, no part of such rent falls due before the end of the year on account of which it is payable, the tenure-holder or ryot shall pay the amount of Road Cess and Public Works Cess due by him in two equal instalments, upon such days as shall be for that purpose appointed by any order of the Lieutenant-Governor."

In section 39 several amendments in the wording were made on the motion of the HON'BLE MR. DAMPIER, so as to meet the case both of estates in which the revenue was payable by instalments, as well as of small estates where there were no instalments.

The HON'BLE MR. DAMPIER said, under section 44 of the Bill a recorded shareholder in the land revenue register, on paying more than the proper proportion of cess on his share, might ask the Collector for a certificate for recovering the excess from the other shareholders. It had been pointed out to Mr. Dampier that the provision, though at first sight so desirable, was open to objection, because, for instance, there might be four shareholders registered as having equal joint shares; but when the estate came to be valued, it might be found that there had been a division of land by metes and bounds as a private arrangement among the shareholders, and that, according to this private partition, the value of the lands actually held by A was very much higher than the value of the lands held by B, C, or D; thus the proportion of the cess payable by A, B, C, and D respectively, would not always be in proportion to the shares recorded in the register. To meet such cases he moved the addition to the section of the following proviso:—

"Provided also that if any person against whom such certificate has been made shall object that the amount of the cesses for the recovery of which the certificate has been made is greater than the amount which the applicant for the certificate would recover from such person in a civil court, as being equitably payable in respect of such person's share or interest in the estate or tenure, and if in the opinion of the Collector there is probable ground for such objection, the Collector may, if he see fit, cancel such certificate, and leave the applicant to his remedy in the civil court."

The motion was agreed to.

The words "may if he think fit" were substituted for "shall" in line 1, clause 2, of the same section.

The HON'BLE MR. DAMPIER said his next amendment arose out of the amendment proposed at the last meeting of the Council by his friend opposite (Syed Ameer Hossein). As section 47 stood, if a holder of rent-free land did not pay his cess on due date, there was a very heavy penalty imposed, namely, the payment of the whole sum due, plus a sum equal to twice the amount of the cess, that is to say, three times the amount with costs. He thought on mature reflection that that was too severe a penalty, and therefore he proposed to alter section 47, so as to render the defaulter liable to pay only twice the amount of cess due with interest at the rate of 12 per cent. and costs. He therefore moved to omit the words from "in addition to" in line 8 to the end of section 47, and the substitution of the following:—

"A sum equal to double the amount of such instalment due to him under sections 46D and 46E, with interest on such sum calculated at the rate of 12 per centum per annum from the date on which such instalment was payable, and with all costs of suit."

The motion was agreed to.

And the following proviso was added to the section:—

"Provided that such holder shall have paid to the Collector all sums due to such Collector in respect of Road Cess and Public Works Cess, and not otherwise."

On the motion of the Hon'ble Mr. Dampier, the following sections were substituted for section 48B:—

"48B. The provisions of sections 46E and 47 shall be applicable to every amount which, as provided in section 46D, may become payable by the owner and holder of any such rent-free land to the holder of any such estate or tenure after the fulfilment of the requirements in sections 46A, 46B, and 46C contained.

48*b*. The provisions of section 47 shall not be applicable to any such amount which may have become so payable, under the provisions of Bengal Act X of 1871 or of this Act, before the fulfilment of the requirements of the said sections 46A, 46B, and 46C; but when any instalment of cess which may have become payable before the fulfilment of such requirements has not been paid to the holder of such estate or tenure on the date on which such instalment was payable, the holder of such estate or tenure may recover the amount of such instalment together with interest at the rate of 12 per centum per annum on such amount, and with all costs of suit.

Provided that no holder of an estate or tenure shall recover any amount under the provisions of this section, unless he has paid to the Collector all sums which became payable by him to such Collector on account of Road Cess and Public Works Cess, at any date within the year in which the amount sought to be recovered became payable to such holder of an estate or tenure."

The Hon'ble Mr. Dampier moved the omission of sections 51 and 51A, and the substitution for them of the following sections:—

"51. Notwithstanding anything in this Chapter contained, the Collector may at any time cause a notice as mentioned in section 16 to be served on the holder of any rent-free land which he shall consider not to have been entered in the return of any estate or tenure in which such land should have been included under the provisions of section 46. Such notice shall require the holder of such land to lodge at the office of the said Collector a return in the form in schedule A contained in respect of such land;

and on service of such notice the provisions of this Chapter shall no longer apply to such lands; but the same consequences shall ensue, and the same liabilities shall attach to the holder of such land as would have ensued and would have attached if such lands had constituted a revenue-free estate.

51A. If within one year of the commencement of this Act no notice has been served on the holder of any rent-free land as mentioned in section 51, requiring him to lodge a return in the office of the Collector, and if such land has not been included in any extracts from returns of estates and tenures published by the Collector under section 46A or other similar section, the holder of such rent-free land shall be bound within one month of the expiration of such year to give information of such omission to the Collector, together with a description of the said land, its area, and the amount of rent payable to him thereupon.

51B. On receipt of such information whether within the time prescribed or after the expiration thereof, the Collector may, by an order in writing, require such owner or holder to make a return of his land in the form in schedule A contained, or if the gross rental of such land does not exceed one hundred rupees, may order that such land shall be summarily valued under section 24 or section 25, and may proceed to make such valuation.

Such order shall have the same effect and be followed by the same consequences as the issue of a notice by the Collector under section 51.

51C. As soon as any rent-free land has been valued by the Collector after the issue of a notice as provided in section 51, or after an order made under section 51B, the holder of such land shall become liable to pay to the Collector the Road Cess and the Public Works Cess due on such land, in accordance with such valuation, for the three years last preceding such valuation, at the full rates at which such cesses were respectively levied for each such year in the district generally, with interest calculated at twelve per centum per annum on

each instalment from the date on which such instalment would have been payable if the land had been so valued at the last valuation of the district or part of a district.

51D. Every holder of rent-free land who, being required by section 51A to give information to the Collector, voluntarily or negligently omits to give such information within the prescribed time, shall be liable for such omission to such fine as the Collector shall think fit to impose, not exceeding fifty rupees, for such omission.

Provided that no such fine shall be imposed by the Collector for such omission on any holder of rent-free land who at any time after the expiration of the time prescribed shall of his own motion and otherwise than after the issue of any notice by the Collector in respect of his lands give such information to the Collector.

51E. No owner or holder of rent-free land on whom a notice has been served by the Collector under section 51, or in respect of whose land an order has been made by the Collector under section 51B, shall be liable to have the land to which such notice or order refers included in any return of an estate or tenure or to pay any amount as Road Cess or Public Works Cess otherwise than to the Collector or to some person appointed by him in that behalf, unless, on a revaluation of any estate or tenure being made, the Collector shall by an order direct that for the future such land shall be included within such estate or tenure for the purposes of this Act;

and upon such order being made the provisions of this Chapter, in so far as they are applicable, shall apply to the assessment and payment of Road Cess and Public Works Cess in respect of such land."

These, MR. DAMPIER said, were very important sections. The sections 51 and 51A, as they now stood in the Bill, provided that if a rent-free holder's land had not been included in any zemindar's return, if no notice came to him that his land was so included, he was bound to ascertain whether he was so included or not. The hon'ble member opposite (Baboo Peary Mohun Mookerjee) then objected that zemindars did not like to have their lakhiraj holders coming in and looking into their returns, and he had favoured MR. DAMPIER with a draft section embodying the zemindar's view of the matter. That had been one of the nuclei out of which these new sections arose. There was another nucleus among the suggestions submitted by a Deputy Commissioner in Chota Nagpore. The Deputy Commissioner had come accidentally upon a lakhiraj tenure in the Chota Nagpore estate, which the manager of that estate had omitted to enter in his returns; and this tenure consisted not of little fields and plots, but of several villages; but having discovered these rent-free lands, the Deputy Commissioner found that under the law as it stood he had no authority to value and levy cess on them. To meet this difficulty, MR. DAMPIER had provided that if the Collector thought proper he might at any time issue notice on the holders of lakhiraj lands calling upon them to come in and be taxed, and from the moment the notice was issued, the lakhirajdar would be treated in all respects as a holder of a revenue-free registered estate; his connection with the zemindar would be altogether cut off for the purposes of the Act.

The new sections further provided that if the holder of any rent-free land escaped both the zemindar's and the Collector's notice, that is, if within one year of the commencement of the Act no notice had been served on him by the Collector to come in and be taxed independently of the zemindar, and if no extracts from returns had been published in his village showing that

his lands had been included in the zemindar's returns, then the lakhirajdar was required himself to come in to the Collector and say "tax me." The Collector might then call upon him to make a return in regular form, or if it was a small estate, he might value it summarily. The great difficulty in these sections had been in some way to meet the wishes of the zemindars. They said that the sections now in the Bill would have the effect of stirring up litigation between the pseudo rent-free holder and the zemindar. MR. DAMPIER hoped these sections would obviate the objection which had been taken.

The HON'BLE PEARY MOHUN MOOKERJEE said the sections which it was proposed to replace by the sections now submitted did not provide for the case in which a person calling himself a lakhirajdar applied to the Collector for permission to file a return and pay cess upon land in respect of which the zemindar had already made a return as his rent-paying land. That was a point upon which it was very difficult to legislate without bringing the lakhirajdar and the zemindar into collision in innumerable cases. He thought the sections now proposed were under the circumstances satisfactory both to the zemindar and to the lakhirajdar, and would therefore withdraw the amendment which he had proposed at the last meeting of the Council.

The sections were then agreed to.

On the motion of the HON'BLE MR. DAMPIER the words "and not being one of the tramways or railways mentioned in section 8" were inserted after "Chapter II" in line 8 of section 52.

On the motion of the HON'BLE MR. DAMPIER the following section was inserted after section 81:—

"With the sanction of the Lieutenant-Governor, the Committee may from time to time undertake to guarantee the annual payment from the District Road Fund of such sums as they shall think fit, as interest on capital expended on any works which may directly improve the means of communication within the district, or between the district and other districts."

In section 115A a verbal amendment was made on the motion of the HON'BLE MR. DAMPIER.

On the motion of the HON'BLE MR. DAMPIER the words "or by the Chairman or Vice-Chairman for sums above that amount" at the end of the first sentence of section 136 were omitted, and the following clause inserted:—

"Cheques for sums exceeding one hundred rupees shall be signed by the Chairman and the Vice-Chairman. When the Vice-Chairman is absent, or from any cause incapacitated from signing, such cheques shall be signed by any *ex-officio* member of the Committee other than the Chairman, for such Vice-Chairman."

In section 145 the words "and Branch Committees" were inserted after "Committees" in line 3, clause 2.

DRAINAGE AND IMPROVEMENT OF LANDS.

THE HON'BLE MR. DAMPIER moved that the report of the Select Committee on the Bill to provide for the drainage and improvement of lands be taken

into consideration, in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Committee. The alterations made in the Bill were, he said, fully set out in the report, and he would only notice some prominent points.

The Committee had inserted a section empowering the Lieutenant-Governor to direct that the powers and functions of the Commissioners should cease when he was satisfied that the objects of their appointment had been fulfilled. Under the Dhankoni Drainage Act, the Commissioners had to make an apportionment immediately the works were done, and became *functi officio* as soon as the apportionment was finished; but in consequence of what had passed in connection with the scheme, the Committee thought it necessary to allow the Commissioners an opportunity of watching results for three years after the works were completed before proceeding to apportion the cost of the works; necessarily, therefore, their existence and powers must continue till all was complete.

Section 24 laid down the procedure by which persons whose property had become deteriorated, instead of having benefited by the works, might claim compensation.

The most material alteration made was in section 28. As he had already stated, according to the Dhankoni scheme, as soon as the work was executed, the Commissioners were required to apportion the cost according to the benefit derived by the owners of the land; but in the course of the years which had elapsed, it was found that in a few cases instead of benefit being derived, injury had been done to some lands, and others had been assessed in a higher proportion than the benefit derived. The Dhankoni Act, however, had made no provision for the correction or revision of the apportionment once made by the Committee.

The Select Committee on this Bill had come to the conclusion that no reasonable apportionment of the expenses could be made until at least three years' experience had been acquired of the effect of the works. With the consent of the Government, therefore, they had provided that the regular apportionment should not be made until three years had elapsed from the completion of the works. During those three years the Commissioners were to do all in their power to watch the land and to make themselves acquainted with such facts as might be useful in making the final apportionment. But they had thought proper that the payment of interest to Government on the capital expended should not be deferred for those three years; and had therefore provided that, as soon as the work was completed, there should be a very rough apportionment to be paid only by the landholders, not for the repayment of any portion of the capital, but to meet the charge on account of interest during that time; the landowners would pay the interest year by year, and at the end of three years the regular apportionment and adjustment would be made. Landholders could recover nothing during those three years, but the amount of interest was so small that the Select Committee considered the payment would not give cause for reasonable complaint to the landholders. That was the main change made in the Bill.

In sections 42 and 43 the Committee provided that every landholder who paid the sum charged upon him may recoup the amount, either by enhancing the rent of tenants whose lands had been improved, or by recovering from them the sum paid by him, together with interest at 5 per cent., the tenant having the option of paying in either of those modes. To section 48 two clauses had been added, providing that the surplus profits vested in the Collector should be appropriated to the liquidation of the instalments, and giving power to capitalize the cost of maintenance and levy the same as the original cost of the works.

Under the Dhankoni scheme there had been a dead-lock in the recovery of the sum advanced by the Government; there were certain technical and legal difficulties arising out of the wording of the Act, and to meet these difficulties Chapter VII of the Bill had been introduced. It contained special provisions for the Dhankoni scheme, and specified the portions of the Bill which should be applicable to works carried out under that scheme, and empowered the Lieutenant-Governor to direct a revision of the apportionment of the cost of any scheme or works carried out under Act V of 1871, if he thought fit so to direct. MR. DAMPIER did not think it necessary to make any further observations.

The motion was agreed to.

The HON'BLE MR. DAMPIER moved to insert the words "whether antecedent or subsequent to the preparation of the scheme and plans" after "valuations" in line 8 of section 25. It had been suggested to him that, as the section stood, the cost of valuation and survey made before the scheme was passed by the Lieutenant-Governor would not be recoverable under the Act.

The motion was agreed to.

Section 37 was passed with a verbal amendment.

The HON'BLE MR. DAMPIER moved to insert the following section after section 19:—

"Upon receipt of such sanction the Commissioners shall cause inspection to be made of the lands about to be affected by the scheme and works to be executed in pursuance thereof, and shall cause a record to be made of their opinion of the value of such land as seen by them before the execution of the works."

This was the result of a suggestion made by the Government in the Public Works Department. It was thought there might be some difficulty afterwards if the apportionment did not take place for three years. The lands might be allowed temporarily to deteriorate for the purpose of getting a light assessment.

The HON'BLE PEARY MOHUN MOOKERJEE said this section imposed a duty on the Commissioners which, he submitted, they would be wholly unable to discharge. In the Dhankoni scheme the lands benefited and reclaimed were more than 30,000 bighas, and the Committee of native gentlemen could not be expected to inspect so large, or perhaps larger, areas of land, and to note the condition of these lands for the purpose of apportionment at the end of three years. It would be a different thing if some Government officer were specially

to make a rough classification of the land before the work was commenced. A provision to that effect would, he thought, be an improvement on the present Bill; but a section like the one proposed, which would throw the work on the Drainage Commissioners, would be to impose a duty which they would not perform, and would find it almost impossible to perform.

After some conversation the motion was by leave withdrawn.

On the motion of the HON'BLE MR. DAMPIER the following section was inserted after section 50:—

"50A. Wherever any land as mentioned in the preceding section shall be deemed to form a tenure or under-tenure held immediately from a landholder as therein provided, every sum payable to the landholder in respect of such land in any one year shall be payable in two equal instalments on such dates as the Commissioner of the Division may fix. Such Commissioner shall cause due notice to be given in the villages concerned of the dates so fixed by him."

On the motion of the HON'BLE MR. DAMPIER the following section was introduced after section 52:—

"52A. The Lieutenant-Governor may by an order in writing direct that any portion of a scheme adopted and ordered to be executed under this Act shall, for the purposes of this Act, or for any such purposes, be deemed to be a separate scheme."

On the motion of the HON'BLE MR. DAMPIER the words "and of the Board of Revenue" at the end of section 55 were omitted. It was not necessary to mention "the Board of Revenue." The Board had an inherent power of controlling and supervising Commissioners and Collectors in the discharge of their revenue duties, and nothing more was required for the purposes of this Act.

On the motion of the HON'BLE MR. DAMPIER the following section was inserted after section 55:—

"55A. The Lieutenant-Governor may from time to time make rules to regulate the following matters:—

(*a*) the proceedings of any officer who under any provision of this Act is required or empowered to take action in any matter;

(*b*) the person by whom, the time, place, or manner at or in which, anything for the doing of which provision is made in this Act, shall be done;

(*c*) and generally to carry out the provisions of this Act.

The Lieutenant-Governor may from time to time alter or cancel any rules so made.

Such rules, alterations, and cancelment shall be published in the *Calcutta Gazette*, and shall thereupon have the force of law."

PUBLIC DEMANDS RECOVERY BILL.

THE HON'BLE MR. FIELD moved that the Report of the Select Committee on *the Bill to amend the Law for the Recovery of certain Public Demands* be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. The Report of the Committee was in the hands of hon'ble members, and they had doubtless observed that very few radical changes had been made in the Bill. He would content himself by referring to three or four of the most important points in which any alteration had been made.

In the second paragraph of the Report the Committee said they had struck out the words which gave the Bill operation within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal. After the Committee had come to a resolution on that point, circumstances arose which led to a reconsideration of the matter, and there is an amendment now before the Council which, if passed, will have the effect of restoring the Bill to the state in which it was introduced.

The next point is the change made in what he would now call a certificate of the first class. It will be in the recollection of members that, when the Bill was introduced, certificates were classified under two heads. The first head included certificates made for arrears of public revenue,—that is, where there is a balance due after the sale of the estate—and certificates made for arrears of revenue due from farmers. In respect of these two classes of arrears, what was then termed a Certificate Absolute was proposed to be made, that is to say, a certificate which should have to all intents and purposes the force of a final decree of the civil court. In the margin of the Bill Mr. Field had, however, pointed out an old Regulation of the Bengal Code which had, in all probability, been overlooked when the Act of 1868 was before the Council. The effect of that Regulation was that if a person were called upon by the Collector to pay a sum of public revenue, and at the time made an objection in writing and then paid the amount, such person could afterwards bring a suit in the civil court to contest his liability. It appeared to the Select Committee desirable to bring that Regulation within the purview of the Bill. The Committee have accordingly done so, and the right which the Regulation gave of contesting the liability to pay has been left intact, but the provision that the amount must first be paid up has been retained. Certificates of this class would no longer be Certificates Absolute, and the Committee therefore struck out the term "absolute." The result is to leave the law as it was before, only that this law is now contained in one Act, instead of being as it was before to be sought for in an Act and a section of an old Regulation.

The next point is the application of the provisions of the Bill to the recovery of arrears of rent in Wards' estates. This matter has been carefully considered in Select Committee, and the result has been to leave the provisions of the Bill as drafted; but the Bill as it stands includes a number of safeguards for the exercise of these provisions, which, it is hoped, will prevent the occurrence of any abuse. These safeguards have been set out at length in the Report of the Select Committee. In the first place, the Manager is held directly responsible. The certificate will be made by the Collector, but it will be made not on the Collector's responsibility, but on the responsibility of the Manager himself. The Collector is not *bound* to make the certificate in all cases. Under the law as it now exists he is bound; but it has been thought desirable to alter this; and it will now be in the power of the Collector to exercise his own discretion; he may make an enquiry and then either make or refuse to make the certificate. Then if the Manager procures the making of a certificate for money actually paid, and proceedings are taken on that certificate to the detriment of the person affected by it, the Manager will be personally liable in an action

to the person injured. The Select Committee have thought it fit to maintain the protection given by the Bill to the Collector and other public officers acting under the provisions of the Bill, but this protection has not been extended to Managers of Wards' estates. In the next place the notice which the Manager sends to the Collector, and on the receipt of which the Collector makes a certificate, is required by the Bill as amended to be verified as a plaint under the provisions of the Code of Civil Procedure. MR. FIELD had observed on the last occasion that the public revenue would suffer, if rents in Wards' estates were realized under this particular procedure instead of under the former procedure of the civil courts. That difficulty has now been obviated by requiring notices sent by the Manager to bear the same amount of stamp duty that a plaint for the same amount of rent would bear if instituted in the civil court. In the next place, in this particular class of certificates, the judgment-debtor will not be the Secretary of State, but the private individual on behalf of whom the estate is managed, and when this private individual is a minor or lunatic, according to the general procedure in this matter, such minor or lunatic will be represented by his next friend. Should there be an action for damages, these damages will therefore fall not on the Government, but on the private individual on behalf of whom the certificate was made. The only other provision to which MR. FIELD desired to allude in connection with this subject was, that the Select Committee had given the Collector, in those classes of demands in which the Government alone is concerned, the power to attach movable property, while they had given no such power to a Manager sending a notice and having a certificate made for realization of rent.

The last point to which MR. FIELD would call attention is in connection with section 20. For the matter of this section he was indebted to a suggestion made to him by his learned friend, the Advocate-General. The law as it stands is this. When movable property is sold in execution of a decree, if that sale is confirmed by the civil court, it remains a good and valid sale, and cannot be set aside even though the decree under which the sale was made be afterwards reversed by an appellate court. That is the general rule. It is subject to this qualification that, if the court which passed the decree were acting entirely without jurisdiction, the sale, like everything else done under the decree, will be void; but in other cases, as for example where the decree is reversed on the merits in the appellate court, the sale holds good, and the person who may have lost property possessing a special value for him is absolutely without redress. The section provides that where a certificate is set aside by a civil court, the court may also set aside any sale made in execution of the certificate. The principle here adopted already exists in the old Regulation Law. When a *patni* sale is set aside by the civil court, the court has power to direct a refund of the purchase-money and to restore the parties in all respects to the *status in quo ante*.

With these remarks MR. FIELD moved that the Report of the Select Committee be taken into consideration.

The motion was agreed to.

The Hon'ble Mr. Field said that the Bill, as it originally stood, extended to Calcutta, but the Select Committee decided to exempt Calcuttta from its operation. From inquiries which had since been made it was found desirable to revert to the original draft, and accordingly he moved to insert in the first clause of section 1 the following:—

"Notwithstanding anything contained in section 2."

In section 2 it is provided that the Act is to be read with Act XI of 1859, and that Act itself contains an Extent Clause (section 62) which enacts as follows:—"The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general Regulations of that Presidency." The general Regulations do not extend to Calcutta, and it was quite possible that the question may be raised whether the result of reading this Bill and Act XI of 1859 together would not be that the Bill would be held to extend only to the parts of the province outside the limits of Calcutta. It was to obviate this difficulty that the amendment is proposed.

The motion was agreed to.

The Hon'ble Mr. Field moved to insert the words "in Act VIII of 1862, section 9," after the words "that is to say" in clause 3 of section 7; and also that in the first schedule the following words and figures be inserted before "VII of 1868:"—

"VIII of 1862	An Act to improve the system of Zemindari Dâks in the Provinces subject to the Government of Bengal.	In section 9 the words from and including 'which said double amount' to and including 'making default.'"

The effect of these amendments would be simply this. Bengal Act VIII of 1862 is an Act relating to zemindari dâk charges. Under section 9 of that Act these charges may be realized by a distraint warrant of the Magistrate. It was thought advisable to alter this, and bring these demands within the provisions of the Bill.

The motion was agreed to.

The Hon'ble Mr. Field moved that the following words be added to the same clause:—

"or in the following sections and portions of the following Act passed by the Governor-General in Council, that is to say, in Act VII of 1870, "The Court Fees Act," sections 19G, 19H, and the note to paragraph 12 of Schedule I."

He was indebted for this suggestion to his friend, the Legal Remembrancer. Under the Court Fees Act, 1870, a duty was for the first time imposed on probates and letters of administration. That Act was amended by Act XIII of 1875, by which provision as follows was made by section 19G of the Court Fees Act:—"Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased," &c., and the section provided for making up any deficiency which had not existed in the first instance. For levying the deficiency afterwards, if the parties refuse or fail to pay, there is no provision as the law now stands.

It had occurred in the course of his judicial experience that a probate fee of some Rs. 3,000 odd was due to Government in a particular case, and he found some difficulty in getting the person who ought to pay that duty to pay it.

The motion was agreed to.

The Hon'ble Kristodas Pal moved that clause 7, section 7, be omitted, and that the sections of the Bill bearing upon the subject-matter of this clause be amended accordingly. The question involved in this clause was raised at the time the Bill was read in Council, and it was also very widely discussed in Select Committee. While admitting that the safeguards introduced would tend to greatly mitigate the evils apprehended, he must confess that the principle involved was not affected by these safeguards. The principle was this. Whether arrears of rent due to a Ward's estate should be recovered under a summary procedure, when arrears of rent due to other private estates were recoverable only by a regular suit in the civil court. It was argued that private individuals were not amenable to all those wholesome influences to which a public officer was subject, and that therefore a summary procedure which might be considered justifiable for a public officer might not be considered equally justifiable for a private individual: hence it was held that for the easy and expeditious recovery of rent the circumstance that Wards' estates were managed by public officers ought to have due weight in providing for a special procedure. But it was well known to the members of the Council that it was not the Collectors who directly managed Wards' estates, but Managers under the Collectors; and although these Managers were subject to official control and might be also subject to the penalties of the law for abuse of power, still it could not be denied that many a time irregularities had been discovered in the management of Wards' estates, chiefly owing to the misconduct of Managers which neither the Collector's control nor the penalties of the law succeeded in checking.

That being the case, Baboo Kristodas Pal did not see any good reason why the special procedure of the Public Demands Recovery Bill should be extended to the realization of rent in Wards' estates. Rents due to Wards' estates were in no sense public demands. It was true that the revenue due to Government from a Wards' estate was at stake, because the Government by taking over the management of the estate surrendered its own right to sell the estate in default; but the revenue of the State was equally at stake in the case of any other private estate. Punctuality in the payment of revenue depended in both cases on the punctual payment of rent. If the ordinary law for the realization of rent was not sufficiently expeditious and efficacious for the Court of Wards, it was not equally so for the private landlord; and if the law was to be amended, it ought to be amended for the benefit of both classes of proprietors.

One of the safeguards proposed was that the application to the Collector should be made by the Manager on his own responsibility. That read well enough on paper, but he appealed to the hon'ble members to say whether poor tenants would have the means or pluck to prosecute the Manager if he abused his authority and vexatiously put them to trouble. The proposed safeguard

would therefore practically signify nothing. Then, again, in order to protect the interests of the State, the Select Committee had provided that the court-fee should be payable on any notice sent to the Collector by the Manager, as upon a plaint for the recovery of the same amount of rent. On the other hand, it was provided in the Bill that, if any party was dissatisfied with the decision of the Collector under the Certificate Procedure, he might contest the decision by a regular suit in the civil court.

He should like to know whether in that case a ryot, who would have recourse to the civil court, would be liable to a second stamp duty, because, when once the certificate was issued, the ryot would be liable to all the costs, which would necessarily include stamp duty. If that were the case, it would be hard upon ryots and would operate against their proceeding in the civil court. Then, although the Collector did not directly manage Wards' estates, and although the Manager was made responsible for the application for a certificate, hon'ble members could not be unaware that the Collector was looked upon by the Court of Wards as the officer responsible for the management of Wards' estates. A good number of these estates were considerably involved when they came into the hands of the Court of Wards, and the reputation of the Collectors depended in a great measure upon the good administration of these estates. If the Manager represented to the Collector that the summary process for the realization of rent was necessary, it would be ten to one that the Collector would give the utmost support to applications from the Manager for the issue of certificates for the recovery of rent. Therefore BABOO KRISTODAS PAL thought that the Collector, who was interested in the good management of Wards' estates, ought not to be entrusted with this quasi-judicial power. For these reasons he opposed clause 7.

The HON'BLE PEARY MOHUN MOOKERJEE said he entirely agreed with the remarks of his hon'ble friend. He thought the amendments made by the Select Committee had far from improved the original Bill on this point. Exemption from stamp duty of notices relating to defaulting ryots was the only reasonable justification for the adoption of the special procedure for the recovery of rent in Wards' estates. But that exemption was proposed to be taken away; the ryots would now have to bear the main cost of litigation without having the benefit of a judicial enquiry or a judicial decision, and if they wished to dispute the correctness of the Collector's certificate, they would have to pay the court-fee duty once again. He thought therefore the amendments made in the Bill had taken away any justification which could be pleaded for the clause before. But why should the public officers wish for a special procedure for the recovery of arrears of rent in Wards' estates? If the civil courts were good enough for zemindars and talookdars, they should be equally good for public officers. And he thought it was not at all desirable that the public officers should be deprived of almost the only means they now had of watching the work of the subordinate civil courts, and practically experiencing the difficulties which lay in the way of the recovery of rent by private individuals; there would be no hope of the amendment of the rent law if public officers had no experience of the difficulties of zemindars in this respect.

The Hon'ble Mr. Dampier said he was almost ashamed to address the Council again. Hon'ble members would be inclined to compare him to nature—"*expellas furco, tamen usque recurrit*"—but he was bound to defend the clause which this amendment proposed to omit. He had consulted local officers as to the necessity of retaining this provision, and the result had not been (as he expected) that they had been unanimous. In two districts, Behar and Chota Nagpore, the officers, with the exception of the Deputy Commissioner of Lohardugga, considered that the summary procedure was not required; but the other officers consulted, in the Eastern Districts especially, said that such a procedure was indispensable. The difficulties in these Wards' estates were so great, being made over to the Court in an embarrassed condition, and very frequently with disputed titles and with no papers, and being often taken over against the wish of those who wished to benefit at the expense of the minor, that the public officers did not know how they could work Wards' estates without the summary procedure.

The first main objection made to this summary mode of realization being extended to the rents of Wards' estates was that the collection of the rents of wards' estates not being for the public purse, the principle on which this summary procedure was allowed for the collection of rents of estates belonging to Government did not apply to Wards' estates. Mr. Dampier would venture to contend that the principle was absolutely the same—namely, that the Government, in performing its duties in trust for the public, should have every reasonable facility which could be given consistently with the safety of private interests. As regards the realization from its own tenants, the power of using the summary procedure was given to the Government by universal acclamation; it was a facility which came within the principle that if it could be given, it should be given, because there was no material danger to individual interests. If an exceptional short cut was by general consent given to the Government to facilitate the performance of its duties financial, on what principle could a similar short cut be refused in the case of its duties fiduciary. In both cases the Government acted in the interest of the public alone; there was no more danger in allowing it in the case of Wards' estates, which the Government administered in trust for the ward, than on those so-called Government estates which it administered as agent of the general public. A distinction was attempted to be made between managers of Wards' estates and tehsildars of Government estates. It was urged that the Collector could not know what was going on in Wards' estates, and he could not be certain that the rent said to be due to the manager was really due. Mr. Dampier said in a most positive way, from his experience of the subject, that practically the management of Wards' estates was just as much under the Collector himself, and that what the manager did was as much within the Collector's control as anything that was done by a tehsildar.

The second great objection was this. The opponents of the present measure having, while it suited their contention, freely made use of the argument that the Collector was not so closely connected with the demand and levy of rents in Wards' estates as in Government estates, now shifted their

ground, and argued that he was so closely connected with the former that he could not be trusted to be the judge as to whether the rents were really due. That would be to make him a judge in his own case. His personal interest was, forsooth, that his official character depended on the punctual collection of these rents! But in this respect how could any possible distinction be drawn between wards' estates and estates the property of Government?

It was true that the official character of a Collector depended on his good administration of his district; but certainly arbitrary injustice or harshness in the collection of rents was not such administration as would be for his credit.

The next objection was that taken by the British Indian Association. It was the least liberal, the least generous, the least worthy of that Association which MR. DAMPIER had ever seen urged. They said, because the great body of rent-receivers in the country were in difficulty as to the collection of rents, and could not recover their rents as easily as it was admitted they ought to be able to do, therefore it was "unfair" to give wards' estates an advantage. But what was meant by "unfair?" Was any competition going on between wards' estates and zemindars' private estates? If you gave one an advantage, was it a disadvantage to the other? It was admitted on all hands that the rent-receivers of the country were in difficulty; it was admitted that it was a blot in the administration that the Government was not able to place them in an easier position for recovering their rents. There were insuperable obstacles in the case of private individuals which did not exist in the case of estates under the management of a Court of Wards' Manager in subordination to the Collector. Why then grudge to the Government, in its management of wards' estates, facilities which it was admittedly desirable to give to all landlords in dealing with their tenants, if the obstacles could only be removed, as they were removed, in the case of wards' estates.

MR. DAMPIER would only ask the Council now to consider what it was for which the administration were asking. They were asked to give facilities for the collection of rent, and it was admitted on all hands that such facilities were desirable for all landlords.

They were asked to let the Revenue officers determine summarily whether rents were due or not. Why, in the neighbouring provinces, in the North-West, the Revenue officers were the constituted judges for the decision of all rent suits. A few years ago the Revenue officers decided rent suits throughout Lower Bengal; and in some parts of the province were still deciding them. Therefore, in asking that the Revenue officers be allowed to be the judges for this purpose in wards' estates, nothing was asked which did violence to one's sense of the general fitness of things.

The Council was asked to allow the Collector to have summary powers, which could be done in this particular case with safety, as an officer in the position of Collector had ample means of knowing that the demand was just; and, moreover, the person on whom the demand was made had one month allowed to him to come in and state his objections; then, if that should not be enough, within the space of one year the tenant was allowed to dispute the claim in the Civil Court. MR. DAMPIER thought those precautions

sufficient. This principle of allowing the Collector to recover rents in wards' estates without antecedent decree, which was allowed in Government estates, had been in force for years, and he would remind hon'ble members who voted last year on the Wards' Bill of the vote they gave. The Council then deliberately allowed this summary procedure to be used in Wards' estates. Hon'ble members would scarcely say seriously that the Council then contemplated that the procedure should only be used in estates which were managed directly by the Collector without the intervention of a manager; there were not two cases in Bengal where there was no manager; so it was impossible for the Council to have meant last year, when it passed the section of the Wards' Act in such general terms, that the summary procedure should only be used where estates were managed directly by the Collector. Why then did hon'ble members propose now to change their front? Was it that any new theoretical argument had been advanced against the measure which was not then patent? No. Was it that instances had been cited showing that the measure in its working had falsified expectations? No. Then was it possible that hon'ble members had changed their minds without the slightest reason for so doing? To this question he must leave them to give an answer.

The Council then divided—

Ayes—2.	*Noes*—9.
The Hon'ble Peary Mohun Mookerjee.	The Hon'ble Mr. Prestage.
The Hon'ble Kristodas Pal.	The Hon'ble Mr. Knight.
	The Hon'ble Syed Ameer Hossein.
	The Hon'ble Mr. O'Kinealy.
	The Hon'ble Mr. Mackenzie.
	The Hon'ble Mr. Field.
	The Hon'ble Mr. Cockerell.
	The Hon'ble Mr. Dampier.
	The Hon'ble Advocate-General.

So the motion was negatived.

The Hon'ble Mr. Field moved that in the 1st Schedule the following words and figures be inserted after "VII of 1878":—

"IX of 1879	...	An Act to amend the law relating to the Court of Wards	Section 63."

It having been decided to extend the Certificate procedure to the realization of rents in Wards' estates, this amendment proposed to repeal section 63 of the Court of Wards' Act, and to add the following proviso:

"Provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enhanced rate has been agreed to by the person liable to pay the same, or has been confirmed by a competent Court."

The motion was agreed to.

The Hon'ble Mr. Field moved that the definition of "Collector" in section 2 as it stood in the original draft of the Bill be restored. This was necessitated

in consequence of the result of the first amendment, which restores the operation of the Bill to Calcutta.

The motion was agreed to.

The Hon'ble Mr. Field moved that the following proviso be added to clause (*b*), section 8:

"Provided that no Certificate duly made under the provisions of this Act shall be cancelled by a Civil Court otherwise than on one or more of the following grounds, that is to say—

(1) that the amount stated in the Certificate was actually paid or discharged before the making of such Certificate:

(2) in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged by a Collector or a Public Officer under the provisions of any Regulation or Act for the time being in force—that the proceedings of such Collector or Public Officer were not in substantial conformity with the provisions of such Regulation or Act, and that in consequence the judgment-debtor under the Certificate was prejudiced by some error, defect or irregularity in such proceedings:

(3) in cases other than those mentioned in clause (2)—that the amount stated in the Certificate was not due by the judgment-debtor under the Certificate:

(4) want of jurisdiction.

"Nothing in this proviso shall be construed to interfere with the ordinary original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes."

There are two classes of Certificates under the Bill. The first class includes Certificates made for arrears of revenue balances remaining over after the sale of the estate in default, and Certificates made for arrears of land revenue due from farmers. The Council has already disposed of this first class of cases. They come now to a much larger class included in section 7 of the Bill. When he moved that the Bill be read in Council, he pointed out that the Act of 1868, though it did not in express words give to individuals, who considered themselves injured by the making of a Certificate, a right of action in the Civil Court, yet the wording of the Act was such as to give this right of action indirectly. It is effected in this way. A Certificate of the second class is declared to have the force and effect of a decree of the Civil Court, but only as regards the execution thereof; and the legal effect of these words is that a suit might be brought in the Civil Court to contest the Certificate on its merits. In drafting the present Bill Mr. Field thought, and the Select Committee had since agreed with him, that it was desirable to place that right of action in plain language on the face of the Bill. Some Revenue officers of great experience had suggested that the effect of doing this would be to encourage persons to litigate, who in ignorance of their rights would not have attempted to do so: and that the immediate result will be a large crop of useless and frivolous suits. They had in consequence carefully considered each clause of section 7, and the demands therein enumerated, to see what would be the effect in each case if a civil action were brought to contest the Certificate; and the ultimate opinion arrived at was that it would be desirable to indicate in a simple way to the Civil Courts the conditions

under which Certificates could be successfully contested or otherwise. The proviso had been drafted to give effect to this opinion.

Mr. Field might explain that there were certain recognized rules in the construction of Statutes whereby certain provisions, though disregarded by the authorities whose duty it was to administer them, would still be held to be of such a nature that the disregard of them would not vitiate acts done under the Statute; while there were other provisions, the result of disregarding which would be that everything done in such disregard would be null and void. In the language of lawyers, the one class is Imperative or *Mandatory*, that is these provisions cannot be disregarded, and if they are disregarded, what has been done under the Statute can be set aside; the other class is directory, and though such provisions should not be disregarded, yet if they are disregarded, what has been done may nevertheless be valid. Mr. Field would give an example. The Patni Regulation provides that before a sale can take place certain notices must be served. One of these notices must be served in the Mofussil, and the Regulation provides certain methods of securing evidence of the service. The peon is to obtain the signature of respectable witnesses; and if such cannot be found, he is to go to the nearest Police Station or Munsif's Court, and make affirmation of service. Now a case happened in which though there was no doubt that the notice had been served in the Mofussil, yet these requisites had not been complied with; and it was held that, while the service was *Imperative* or *Mandatory*, these provisions as to evidence of service were merely *Directory*, and the omission to comply with them did not invalidate the service, which was the essential thing.

That is a very simple case. But there are many other cases in which considerable room for doubt exists, and the highest Courts in England and America have found it difficult to lay down a rule applicable to all cases, and declaring exactly what provisions are imperative or mandatory, and what directory. Of late years, however, a very practical idea has suggested itself, namely that it is material to consider whether any substantial injury has been done to the parties concerned in cases in which certain provisions of a Statute have been overlooked.

If no real injury had been done, if there was no reason to suppose that the result, so far as concerned the person affected, ought to be different, then to set aside what had been done on account of the neglect of a formality, however important, and this, when it could be done again, observing the formality, with the same identical result to the individual, was merely to encourage litigation for no useful purpose. The principle of which he was speaking had been adopted in recent legislation for this country. Section 578 of the Code of Civil Procedure provides that no decree shall be reversed or substantially varied on account of any error, defect, or irregularity not affecting the merits of the case or the jurisdiction of the Court. Section 283 of the Code of Criminal Procedure enacts that no finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal on account of any error or defect, or on account of the improper admission

or rejection of evidence or misdirection in any charge to the jury, unless such error or defect has occasioned a failure of justice, either by affecting the due conduct of the prosecution or by prejudicing the prisoner in his defence. Clause 2 of the proposed proviso has been drafted in accordance with these legislative precedents. To illustrate this by reference to the subject-matter of the Bill. The Bill provides for the recovery of registration-fees, the expense of constructing embankments, court-fees, fines, and so forth. Now if a Public Officer, having under some Act or Regulation jurisdiction to impose a fine or assess the expenses or fees recoverable by Government had in the exercise of this jurisdiction disregarded some provisions of the Act or Regulation as to the manner in which this jurisdiction is to be exercised, there being, however, no pretence for saying that any material injury had been done to any one by such disregard of such provisions, the Civil Court would have no power to set aside what had been done. MR. FIELD might observe that there was really no legislation—no law-*making* here. The Council were only asked to insert in the Bill by way of instruction and guidance for the Courts—and thus to save litigation—what in all probability would in any given case be the result of an appeal to the highest tribunal. The rule, it was to be observed, is intended to apply only to cases in which the demand is a demand warranted by an Act or Regulation. It will have no application to rents in Government estates or Wards' estates, and in these classes of cases there will be nothing to prevent the Civil Court from going completely into the merits of the case and doing justice to the parties.

In respect of cases other than those covered by clause 2 of the proviso, no restriction is placed upon the Civil Courts. Under the law as it now stands, and under the law as the Bill will leave it, if a Certificate is made without jurisdiction, the Civil Court has and will have full power to set it aside.

The HON'BLE PEARY MOHUN MOOKERJEE said he thought the amendment proposed did not cover all the cases which ought to hold good for setting aside a Certificate. If the debt was barred by limitation, that was a ground which might be set up. Again, suppose the Collector did something which virtually deprived the revenue-farmer of the property, the farmer might set that up as a ground for not paying his dues; but this proviso will shut them out from raising that objection, and the Civil Court will be precluded from cancelling it on that ground. A surety will have good ground to ask for the cancelment of the Certificate, on the ground that the Collector has entered into an agreement with the principal without his knowledge; but the language used would not permit the Civil Court to set aside the Certificate on that ground.

MR. FIELD said that, according to the law of this country, it may be contended that when the period of limitation has expired, not only is the remedy barred, but the right is gone. The third clause of the proviso sufficiently provides for a Certificate made when no debt is due; and the Bill allows a Certificate to be made only for money the recovery of which is not barred by limitation. In the case of a surety, if the Collector had given time to the principal or had done anything else which, according to the Contract Act, will release the surety, in that case also the money will not be due, and the

Civil Court will have power to set aside the Certificate. The provisions of the Bill could not alter the Contract Act.

The motion was then agreed to.

In the 2nd Schedule, form 2, a verbal amendment was made on the motion of the HON'BLE MR. FIELD.

The HON'BLE MR. DAMPIER moved that the following words be inserted in clause (*b*) of section 8:—

"but no such suit shall be entertained unless such judgment-debtor has stated in a petition presented to the Collector under Section 12 the ground upon which he claims to have such Certificate cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the Civil Court that there was good reason for such omission."

The effect of the amendment, he said, was to oblige a person against whom a Certificate is made, if he has reasonable objection, to make it before the Collector, and not to lie by and bring a civil suit. It was said that perhaps the objection might be of such a nature that the person does not discover its existence or nature until expiry of the time for making objections before the Collector: the section provided that in such cases cause might be shewn for not having made the objection before. A similar provision will be found in the law for the sale of estates for arrears of revenue.

The HON'BLE KRISTODAS PAL said a suggestion to the effect of the amendment was made by the hon'ble mover of the Bill in Select Committee, and, if he recollected aright, the majority of the members were opposed to it at the time. It was held that the person affected by the Certificate might not discover in time any good cause for contesting it, but subsequently may be put in possession of grounds sufficient to set aside the Certificate. It was therefore resolved in Select Committee that the suggestion should not be embodied in the Bill. If this amendment were adopted, resort to the Civil Court would practically be clogged; when the right was conceded to go to the Civil Court, the appellant should be left unfettered. For these reasons BABOO KRISTODAS PAL opposed the amendment.

The HON'BLE MR. MACKENZIE said he would support the amendment. If the Council referred to the grounds on which a Certificate could be cancelled, they would, he was sure, admit that every one of those grounds ought to be known at the time of the issue of the certificate, and the principle which applied to objections to the sale of estates was applicable to the realization of public demands. If the person really did not know the ground of objection in time, he could easily satisfy the Court of the fact.

The motion was then carried.

COMPULSORY VACCINATION.

THE HON'BLE KRISTODAS PAL moved that the report of the Select Committee on the Bill to provide for compulsory vaccination be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses be considered for settlement in the form recommended by the Select Committee. At that late hour he would not occupy the time of the Council

with any detailed statement of the report, but would only refer to one or two im portant sections. The Select Committee provided that before extending the law to any municipality or local area, the Government should issue a notification to the inhabitants to express their opinion on the subject; the object was to take the sense of the local community upon it. Persons who had no parents or guardians were included in the definition of "unprotected persons." Before he concluded, he would call upon the Hon'ble the Financial Secretary to Government to give an assurance to the Council as to what course the Government was disposed to take if the expense of establishment was not covered in Calcutta by the fees to be levied. So far as he understood the hon'ble member, he meant that the Government would pay the salaries of the Native Superintendents, and that the municipality should provide for the staff of vaccinators and for the supply of lymph. The Health Officer would not be paid any additional salary for the work which would devolve upon him. It would be satisfactory to the Corporation and the public if an assurance were given on behalf of Government on the subject.

The HON'BLE MR. MACKENZIE said there was no intention at present of diminishing the cost which is incurred on account of vaccination. The Government paid the salaries of the Deputy Superintendents; and until it was shown that the fees were sufficient to meet other charges which the Government at present bore, it had no intention of withdrawing any portion of its present expenditure.

The motion was agreed to.

The HON'BLE KRISTODAS PAL moved the addition to section 26 of the following proviso:—

"Provided also that nothing in this section shall be held to compel the production before a Magistrate of any female child above the age of eight years."

Section 26 provided for the compulsory production of children who were not vaccinated. It would be revolting to the feelings of his countrymen, both Hindus and Mahomedans, if girls above eight years were produced by force before the Magistrate and vaccinated in his presence, and he therefore moved this amendment to guard against possible outrage on native feeling.

The motion was agreed to.

HOWRAH BRIDGE ACT AMENDMENT.

THE HON'BLE MR. MACKENZIE moved that the report of the Select Committee on the Bill to amend the Howrah Bridge Act, 1871, be taken into consideration in order to the settlement of the clauses of the Bill. This, he said, was a very simple matter which he explained fully on the last occasion. The alterations made by the Committee were entirely verbal, and he had now nothing farther to add.

The motion was agreed to.

On the motion of the HON'BLE MR. MACKENZIE the Bill was then passed.

The Council was adjourned to Saturday the 10th April.

Saturday, the 10th April 1880.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*
The Hon'ble G. C. Paul, C.I.E., *Advocate-General,*
The Hon'ble H. L. Dampier,
The Hon'ble H. A. Cockerell,
The Hon'ble C. D. Field, LL.D.,
The Hon'ble A. Mackenzie,
The Hon'ble J. O'Kinealy,
The Hon'ble Syed Ameer Hossein,
The Hon'ble Kristodas Pal, Rai Bahadoor, C.I.E.,
The Hon'ble J. B. Knight, C.I.E.,
The Hon'ble Peary Mohun Mookerjee,
and
The Hon'ble F. Prestage.

RECOVERY OF PUBLIC DEMANDS.

The Hon'ble Mr. Field moved that *The Bill to amend the Law for the Recovery of Certain Public Demands* be further considered, and that the words "or where no such notice has been duly served within thirty days after the execution of any process for enforcing such Certificate" be inserted between the words "notice" and "file" in line 8 of section 12. The effect of this amendment, he observed, would simply be this,—that if the notice, which is required to be given to the judgment-debtor of the Certificate having been filed in the office of the Collector, had not been served, the judgment-debtor might come in and object, on the ground that he had not received such notice and therefore had no reasonable opportunity of making an objection. The Collector would then be able to deal with that particular form of objection and do complete justice between the parties. Mr. Field was indebted to the learned Advocate-General for this amendment, which contains an important provision omitted in the Act of 1868, and which it was very desirable to supply in the present Bill. The motion was carried.

On the motion of the Hon'ble Mr. Field the Bill was then passed.

COMPULSORY VACCINATION.

On the motion of the Hon'ble Kristodas Pal the Bill to make vaccination compulsory was passed.

ROAD AND PROVINCIAL PUBLIC WORKS CESSES.

On the motion of the Hon'ble Mr. Dampier the Bill to amend and consolidate the law relating to rating for the construction charges and maintenance of district communications and other works of public utility and of provincial public works was further considered.

On the motion of the HON'BLE MR. DAMPIER the following amendment, which he explained to be a verbal one, was adopted:—namely, to omit from the last paragraph of clause (*b*), section 20, the words "and on the acceptance of such petition and on payment of the amount of cess due from the date when the corrected valuation came into force, rent at the rate shown in the corrected return may be recovered," and to substitute—

"and on the acceptance of such petition, the Collector may make such correction in the valuation of the estate or tenure as may be required; and as soon as the person of whose estate or tenure the return and valuation have been so corrected shall have paid in all sums due by him as road cess and public works cess in accordance with such corrected valuation, and not otherwise, such person may recover such rent as may be due to him on any tenure or land included in the return of such estate or tenure at any rate not being in excess of the rate shown in the corrected return as payable in respect of such tenure or land."

On the motion of the HON'BLE MR. DAMPIER the following words were added to the end of the first paragraph of section 35:—

"and that, if such estate or tenure cannot be found, such roll and such extracts shall be posted at some conspicuous place in any village in which such estates or tenures are believed to be situate."

It had been brought to notice that in Chittagong, where estates and tenures were infinitessimal, the plots of land which comprised an estate or tenure very often could not be identified.

The HON'BLE MR. DAMPIER moved the addition to section 44 of the following paragraphs:—

"Whenever any such separate account is opened after the valuation of an estate, and while such valuation remains in force, the Collector shall issue a notice on the holders of the shares severally, in respect of which the accounts are to be kept separately, informing them that, unless any objection is preferred to the Collector within one month of the service of such notice, the amount of the cesses which the whole estate is liable to pay according to the existing valuation will, from the date on which such separate accounts were opened, be apportioned among such shares severally in proportion to the amount of Government revenue for the payment of which each such share is entered in the separate accounts as being liable. Such notice shall specify such proportionate amount.

"If no such objection be preferred within the time specified, such proportionate amount shall be the amount of the cesses for which the respective holders of such several shares are primarily liable as mentioned in section 13 of the said Act XI of 1859, subject, however, to the general responsiblity of the holders of the entire estate as mentioned in section 14 of the said Act, if the amount of the cesses due on account of any such share cannot be recovered as provided in sections 100 and 101 of this Act from the holders of such share.

"If any such objection shall be preferred as aforesaid, the total amount of the cesses for which the whole estate is liable according to the existing valuation shall be apportioned among the several shares in respect of which such separate accounts are opened in proportion to the annual value of such shares respectively under such rules or special instructions, not being inconsistent with this Act, as may be issued by the Board of Revenue; and the holders of such several shares shall be primarily liable as aforesaid for the payment of the amount of the cesses so apportioned on their shares respectively."

He said the defect in the Bill which this amendment would correct came to his notice accidentally in the shape of an appeal to the Board of Revenue. As the law stood, hon'ble members were aware that joint sharers in an estate

might have separate accounts opened under Act XI of 1859 as regards the payment of their land revenue; from that moment the shares in respect of which separate accounts were opened became, in the first instance, separately liable for the amount of revenue written against them respectively; but if the Collector failed to realize from any particular share the particular amount of revenue which was primarily due upon it, then he proceeded to recover it from the entire estate, which still remained ultimately responsible notwithstanding the opening of the separate accounts. It was represented that under Act X of 1871 there was no corresponding section empowering the Revenue authorities to extend this protection of primary separate liability to the case of cesses payable on account of land. That was a great hardship—so great that, although there was nothing authorizing it, the Board of Revenue issued instructions to the Collector to do something which was not perfectly legal in this direction, and it was on the working of that order of the Board that the appeal came up.

Under Act XI of 1859, before a separate account could be opened on account of revenue, the applicant must show two things—(1) the share of the revenue for which his share is answerable, and (2) the specification of the share; but it was not necessary, as in the case of partition, that the value of the share should be in proportion to the amount of revenue for which it was declared primarily liable. Take the simplest case where an estate belonged to four different shareholders holding jointly, four-anna share belonging to each shareholder. Among themselves by private arrangement they had divided the land by metes and bounds, and in the course of time one share had become much more valuable than the others; this was admitted by all, and there was no dispute among the shareholders. As the law stood regarding the opening of separate accounts for revenue, the owner of the more valuable so called four-anna share could say, "although my share is more valuable, yet the amount of revenue for which I am answerable is not more than that for which my co-shareholders are liable, as we each are owners of a so called four-anna interest in the estate." There was no objection to opening the separate account in this way as regards land revenue; but in applying the same system to opening separate accounts for the cesses a difficulty arose, not in cases in which separate accounts had been opened before valuation, because then each such share would be treated as a separate estate for valuation, and valued on its own actual assets, but the difficulty would arise where, after the valuation of an estate as a whole had been made, separate accounts were opened for shares of which the actual value was not in exact porportion to the amount of revenue for which each share became primarily responsible. It was very necessary to make some provision by which the distribution of the cess for which the entire estate had been made liable by the cess valuation proceedings should be in accordance with the value of the shares, and not the amount of revenue for which each share was liable; these clauses had been drafted for this purpose. They provided that as soon as a separate account was opened, the first assumption should be that the cess would be payable in the same proportion as the revenue. If objection was raised, it would practically be "the assets of

my share are not so large as my nominal share represents." The sections laid down the broad principle that in such cases the valuation should be in proportion to the annual value of the respective shares, and left the details of procedure to be provided by such rules as the Board of Revenue may prescribe.

The motion was agreed to.

On the motion of the HON'BLE MR. DAMPIER the following clause was inserted after clause (*c*) of section 108 :—

"Apportioning the amount of the cesses for the payment of which the respective holders of the several shares of an estate in respect of which separate accounts are kept shall be primarily liable under section 44."

On the motion of the HON'BLE MR. DAMPIER the words "twelve and a half" were substituted for "twelve" in sections 45, 47, 58, 62, and 71. This was a suggestion of the Commissioner of Chittagong to facilitate calculations of interest, twelve and a half per cent. being exactly two annas in the rupee.

On the motion of the HON'BLE MR. DAMPIER the words "or in one payment" were inserted after "instalments" in line 5 of section 57, the object being to enable the Government to prescribe that in the case of very small tenures the whole amount of cess should be paid on a fixed day in the year and not in two instalments.

The HON'BLE MR. DAMPIER moved to omit section 72, and to add the following proviso to section 69 :—

"Provided that no holder of rent-free land who at any time after the expiration of the time prescribed shall of his own motion and otherwise than after the issue of any notice by the Collector in respect of his lands give such information to the Collector, shall be liable to prosecution for omitting to give such information within the prescribed time."

The change was to prevent any chance of the sections being considered to clash with the Penal Code. As section 69 stood with the proposed amendment it merely provided that the lakhirajdar was bound to give information, and the penalty for not doing so was left to the operation of the Penal Code.

The motion was agreed to.

On the motion of the HON'BLE MR. DAMPIER the words "or until a general re-valuation of the district, or part of a district, be made under section 12, or until the re-valuation of such property be specially ordered under section 15" in lines 5 to 8 of the last paragraph of section 81 were omitted. If the arrangement between the Collector and assessee was made for five years, the fact of a re-valuation of the district intervening ought not to put a stop to that arrangement, but it might be allowed to run out.

The HON'BLE MR. DAMPIER moved the following amendments :—

In section 161, lines 1 to 4, to substitute the words "the provisions of sections 114 to 119 (both inclusive), 121, 124 to 129 (both inclusive), 141 and 142" for the words "the provisions of sections 114 to 119 (both inclusive), of sections 121 to 130 (both inclusive), and of sections 141 and 142."

To substitute the following for the first part of section 167 from the words "the Lieutenant-Governor" in line 1 down to "Committee and" in line 11 :—

"167. The Lieutenant-Governor may in any such case declare that the Branch Committee shall have the full powers of a District Road Committee within such portion of the

district; and whenever the Lieutenant-Governor shall so have declared, the District Road Committee shall, within such portion of the district, cease to exercise powers and functions under sections 135, 141, 143, 144, 145, and 148. Such powers shall then vest in the Branch Committee; and the provisions of sections 122, 123 (with the exception of clauses 2, 3, 4, and 6), 130, 144, 146, and 149, shall apply to the proceedings of such Branch Committee, provided that all correspondence with the Commissioner shall be submitted through the Collector of the district."

For these amendments he had to thank the Secretary in the Financial Department, who had experience in the working of Committees and Branch Committees. These sections were carefully gone over. In section 161 were recited those sections which were applicable to the ordinary proceedings of every Branch Committee; under section 169 the Lieutenant-Governor might give a special status to some Branch Committees, and when such status was given, certain functions of District Committees would cease and be performed by Branch Committees instead; in section 167 those sections of the Bill were recited which enumerated the functions which were transferred in such cases from District Committees to Branch Committees.

The Hon'ble Mr. Mackenzie observed that under section 161, the ordinary Branch Committee would act as the agent or executive of the District Committee. But Branch Committees which were so invested would be independent, and would, with one or two exceptions, exercise all the powers of District Committees. There would be but one Engineer for the district, but they would have their own statement of roads and correspond with the Commissioner of the Division, but through the Collector of the District, who would thus be able to keep all the threads of the Committees in his own hands.

The motion was agreed to.

On the motion of the Hon'ble Mr. Dampier the words "and for the preservation of the trees planted by, or which are in the charge of, the Committee" were inserted after the word "communication" in clause (2) of section 182.

The Hon'ble Mr. Mackenzie said, hitherto leave of absence had been given to Engineers by District Committees at their own pleasure, and inconvenience had been felt from the Government having had no knowledge of the changes made in consequence. He therefore moved amendments, the effect of which would be that "leave of absence on medical certificate may be granted by the Lieutenant-Governor," and that "no other leave shall be granted to a District Engineer by the Committee without the sanction of the Lieutenant-Governor."

The motions were agreed to.

On the motion of the Hon'ble Mr. Dampier the Bill was then passed.

DRAINAGE AND IMPROVEMENT OF LANDS.

On the motion of the Hon'ble Mr. Dampier the Bill to provide for the drainage and improvement of lands was further considered.

The Hon'ble Mr. Dampier moved to substitute the words "by the holders of each estate, tenure, or undertenure from whom any sum is made payable"

for the words "by each landholder" in clause (3), line 9 of section 26; and the insertion of the following after the word "payable" in clause (4), line 6 of the same section :—

"Where two or more persons are holders of an estate, tenure, or undertenure, service of notice under this clause on any one such person shall be deemed to be good and sufficient service on each and all of such persons."

The motion was agreed to.

Clause 3 related to the rough distribution in respect of the liability to pay interest before the more precise apportionment had taken place; the interest on the capital advanced to be paid during the three years between the completion of the works and the precise appropriation of the liability. The amendment was a mere verbal alteration to prevent it being thought that each individual of a body of joint holders was to be served with a separate notice. A whole tenure was to be treated for this purpose as one unit.

The amendment in clause 4 was similar. This notice was not a demand for payment; it was a mere notice that the Commissioners had made the rough apportionment among the different estates and tenures and of the amount of interest payable by the different tenures and estates. The notice might be given to one of many shareholders whose interest it would naturally be not to keep it to himself: no process could be taken for recovery until separate notices were issued.

The motion was agreed to.

On the motion of the HON'BLE MR. DAMPIER the following proviso was added to section 35 :—

"Provided always that the total sum apportioned by every apportionment and report so revised and altered, as payable in respect of all the lands improved or reclaimed by the works, shall not be less than the total cost of the construction of such works within the meaning of section 25."

In section 49, on the motion of the HON'BLE MR. DAMPIER, an amendment was made to the effect that every officer appointed by the Lieutenant-Governor under section 33 (in default of the Commissioners making apportionment) shall have the power of taking evidence in the same manner as the Commissioners or the Commissioner of the Division.

On the motion of the HON'BLE MR. DAMPIER the Bill was then passed.

The Council was adjourned *sine die*.

Wednesday, the 8th September 1880.

PRESENT:

The HON'BLE G C. PAUL, C.I.E., *Advocate-General, Presiding.*
The HON'BLE H. A. COCKERELL,
The HON'BLE J. O'KINEALY,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
The HON'BLE J. B. KNIGHT, C.I.E.,
The HON'BLE PEARY MOHUN MOOKERJEE,
and
The HON'BLE F. PRESTAGE.

CONTAGIOUS AND INFECTIOUS DISEASES AMONGST HORSES.

THE HON'BLE MR. O'KINEALY moved for leave to introduce a Bill to provide against the spreading of certain contagious and infectious diseases among horses. He said the President and Hon'ble Members were aware that in the last Session he moved for leave to introduce a Bill to that effect, and the Bill, after a series of meetings of the Council, was ultimately passed. The Bill was of a very simple nature and contained only 15 clauses. But unfortunately one of the clauses, section 14, militated against an order of the Government of India in the Financial Department, prohibiting the creation of special funds without the previous sanction of the Government of India. The section of the Bill which was objected to ran as follows:—"Subject to the provisions of section 13, the proceeds of all fines recovered under this Act shall be applied, as the Lieutenant-Governor may direct, to expenses incurred in the execution of the same" With the exception of that section, the Governor-General in Council had been pleased to sanction the passing of the Bill. Under these circumstances, MR. O'KINEALY moved for leave to introduce a Bill exactly as it stood when the Bill was passed in the last Session of the Council, but with the omission of the section which had been objected to

The motion was agreed to.

The HON'BLE MR. O'KINEALY applied to suspend the rules for the conduct of business to enable him to move that the Bill be read in Council and passed.

The PRESIDENT having declared the Rules suspended—

The HON'BLE MR. O'KINEALY moved that the Bill be read in Council.

The motion was agreed to.

The HON'BLE MR. O'KINEALY moved that the Bill be passed.

The motion was agreed to, and the Bill passed.

ROAD AND PROVINCIAL CESSES.

THE HON'BLE MR. O'KINEALY moved for leave to introduce a Bill to amend and consolidate the law relating to rating for the construction, charges, and maintenance of district communications and other works of public utility and of provincial public works.

The motion was agreed to.

The HON'BLE MR. O'KINEALY, in applying to the President to suspend the Rules for the conduct of business in order that the Bill be read in Council and

passed, said, he would remind the Council that a Bill to amend and consolidate the Acts of 1871 and 1877 was introduced by his Hon'ble friend Mr. Dampier in the last Session of the Council, and after considerable discussion and careful consideration was ultimately passed. On the Bill being forwarded to His Excellency the Governor-General for his assent, he was pleased to say that, although the Bill had his general approval, there were two clauses in it, sections 65 and 66, which, under the existing system of legislation, he feared were beyond the powers of this Council, and the Bill accordingly could not be sanctioned. Those two sections had been looked upon by his Hon'ble friend Mr. Dampier, the Member in charge of the Bill, as clauses of great importance. One of the great difficulties which zemindars brought forward in connection with the existing Acts was that it was absolutely impossible for them to realize the cess paid by them from lakhirajdars; and the Hon'ble Mr. Dampier, in presenting the report of the Select Committee, said:—

"Section 50 (sections 65 and 66 of the Bill as passed) was very important. It touched one of those four cardinal points which MR. DAMPIER had mentioned in asking leave to introduce the Bill. The general complaint was that the landholder who had paid cess on account of lakhiraj lands could not recover it, owing to the difficulty of identifying and getting hold of the actual lakhirajdar for the purpose of suing him; and it was notorious that the difficulty was a real one. Section 50 was introduced with the object of remedying it. When the landholder had paid in the amount of cess due from him, and after he had taken the precautions required by the Bill, so that the lakhirajdar must know perfectly well the amount which was due from him, the landholder was authorized to proceed either against the owner, the holder, or the occupier of the lakhiraj land; and when he had obtained a decree against any of these, he might execute it either against the owner, holder, or occupier whom he found upon the land, or by bringing the land itself to sale."

In a few words it amounted to this, that the Government having by summary process realized the cess from the zemindar, thought it fit and proper that the zemindar should be able to follow the lead and realize the cess by a somewhat similar process. That, MR. O'KINEALY believed, was the intention of Mr. Dampier and of the Council when the Bill was passed. He understood that the Governor-General in Council, although he considered that these sections were to a certain extent inconsistent with the provisions of the Civil Procedure Code, had promised to take them into consideration and pass a Bill containing the sections which were *ultra vires* of the Bengal Council, should the local Government consider their passing absolutely necessary. Under these circumstances, MR. O'KINEALY applied that the Rules be suspended, and the Bill read in Council without those two sections.

The HON'BLE KRISTODAS PAL said that, if he understood aright the objection taken by the Government of India to the clauses mentioned by the Hon'ble Mover, it was that the Council of the Lieutenant-Governor of Bengal could not pass any law which conflicted with the Civil Procedure Code. That was, however, only a technical objection. As regards the merits of the clauses which had been thus objected to, they had been fully explained by the original mover of the Bill, and rightly interpreted by the present mover. If the Government imposed upon the zemindar the duty of collecting the cess from the lakhirajdars, it was but fair and just that the Government should

give the zemindar adequate facilities for collecting it. The experience gained during the last nine years from the working of the Cess Act had shown that the zemindar was unable, under the existing law, to collect the cess from the lakhirajdar. His friend, Maharajah Narendra Krishna, had suffered a loss of thousands of rupees by having had to pay the cess for the lakhirajdars, and being unable, in consequence of the defects of the law, to realize it from them. His case was brought to the notice of the Hon'ble Member in charge of the Bill which was passed last Session, and it was in order to remedy the defects under notice that the clauses now omitted from the Bill had been introduced. BABOO KRISTODAS PAL believed the Government of India did not take exception to the clauses themselves, but only because they were *ultra vires* as regards the powers of this Council. He ventured to express a hope that the Government of India would be pleased to pass the necessary measure in order to give effect to the clauses omitted from this Bill. He also hoped that His Honor the Lieutenant-Governor would bring to the notice of the Government of India the views of this Council on the subject.

The HON'BLE PEARY MOHUN MOOKERJEE said he entirely agreed with his Hon'ble friend in thinking that the two sections which would be omitted from the present Bill were absolutely necessary. The experience of the last nine years had shown that, notwithstanding the provision in the law that these cesses were recoverable from ryots by landholders as rent, a large percentage of the cesses could not be recovered from ryots on account of various reasons. But if the facilities which landholders enjoyed in the collection of cess from ryots were not extended to the case of lakhirajdars, the difficulty of recovering cess from lakhirajdars would be enormous. He thought, therefore, that these sections were absolutely necessary. But if the Government of India objected to give landholders the powers contemplated by these sections, it was but fair to landholders that they should be relieved from the burden which the law imposed upon them of collecting the cess from persons who were in no sense subordinate to them.

The Rules were then suspended and the Bill read in Council.

The HON'BLE MR. O'KINEALY moved that the Bill be passed, and in doing so remarked, with reference to the observations which had fallen from his Hon'ble friends opposite, that, as he had said before, the Hon'ble Mr. Dampier, when in charge of the original Bill, considered the objections now raised to be objections of great importance. Practically they amounted to this, that these clauses to a certain extent threw upon zemindars the duty of paying cesses which in a great many cases they were unable afterwards to recover, and in this way there was a certain premium put upon zemindars not to pay the proper amount of tax. He knew himself, from what Mr. Dampier had told him, that he considered the previous provisions were a serious grievance to the zemindar and entailed a serious loss upon the Government. He had no doubt, therefore, that the objections which his Hon'ble friends opposite had raised to the passing of this Bill without those sections would be duly weighed, not only by the local Government, but by the Governor-General in Council.

The motion was agreed to and the Bill passed.

The Council was adjourned *sine die*.

Reg. No 1020G —200—30-4-81.

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